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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1912

No. [redacted] 10

BUCK STOVE AND RANGE COMPANY, SAMUEL CUPPLES WOODENWARE COMPANY, AULTMAN AND MILLER BUCKEYE COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

C. C. VICKERS, MARY P. VICKERS, AND P. B. MAXSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED SEPTEMBER 15, 1909.

(21,824.)

(21,824.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 598.

BUCK STOVE AND RANGE COMPANY, SAMUEL CUPPLES WOODENWARE COMPANY, AULTMAN AND MILLER BUCKEYE COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

C. C. VICKERS, MARY P. VICKERS, AND P. B. MAXSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1909.

1–5 In the Supreme Court of the State of Kansas.

No. 4209.

BUCK STOVE & RANGE COMPANY, a Corporation; SAMUEL CUPPLES Wooden Ware Company, a Corporation; Altman & Miller Buckeye Company, a Corporation, Successor in Interest to Altman, Miller & Company, a Corporation, Plaintiffs in Error,

vs.

C. C. VICKERS, MARY P. VICKERS, and P. B. MAXSON, Defendants in Error,

and

No. 4160.

CONSOLIDATED STEEL & WIRE COMPANY, a Corporation; ST. LOUIS Refrigerator & Wooden Gutter Co., a Corporation; St. Louis Glass & Queensware Company, a Corporation; Galveston Rope Company, a Corporation, Successor in Interest to Galveston Rope & Twine Co., a Corporation, Plaintiffs in Error,

vs.

C. C. VICKERS, MARY P. VICKERS, and P. B. MAXSON, Defendants in Error.

Filed Apr. 24, 1908.

D. A. VALENTINE,
Clerk Supreme Court.

Petition in Error.

And now come the above named plaintiffs in error and respectfully represent to the court that heretofore, to wit, on the 29th day of November, A. D. 1907, the above named defendants in error, by the consideration of the District Court of Saline County, State of Kansas, recovered a judgment and decree in said court against these plaintiffs in error, in each of the above entitled cases. Said cases were by agreement of the parties, and by the consent and order of said court, submitted to the said court at the same time and tried at the same time, the issues in each and the evidence in each case being precisely similar.

The parties in each of said cases, in said District Court, were the same as stated in the above caption, and the plaintiffs in error in each of the said cases were plaintiffs in said District Court, and the defendants in error were defendants in said District Court.

A duly prepared and properly authenticated transcript and case made containing the proceedings had in said cases in said District Court including said judgment and decree, is hereto attached,
6 marked "Exhibit A" and made a part hereof.

These plaintiffs in error further say that in the proceed-

ings had in said cases in said District Court the said court committed many errors, which errors were material and prejudicial to the rights of these plaintiffs in error, whereby they were deprived of a fair trial and hearing in said cases. That said errors fully appear in the aforesaid transcript and case made hereto attached. That among the many errors committed by said District Court against these plaintiffs in error, the plaintiffs in error specially complain of the following:

First. Said district court erred in dismissing the actions of these plaintiffs in error.

Second. Said district court erred in overruling the motion of these plaintiffs in error for judgment in their favor on the special findings.

Third. Said district court erred in permitting the defendants in error to introduce improper evidence in the trial of said causes, over the objections of these plaintiffs in error.

Fourth. Said district court erred in not rendering judgment in favor of these plaintiffs in error on the special findings in said cases.

Fifth. Said district court erred in rendering judgment against these plaintiffs in error and in favor of the defendants in error.

Sixth. Said district court erred in refusing to grant a new trial to these plaintiffs in error, as requested by them, and by overruling their motion for a new trial in said cases.

Seventh. The said district court erred in determining and deciding that the Northeast Quarter of Section 36, Township 17, Range 9 East of the 6th Principal Meridian, Morris County, Kansas, was the homestead of C. C. Vickers and Mary P. Vickers at the time of the conveyance of the same to P. B. Maxson.

Eighth. Said district court erred in determining that said homestead was not abandoned as a homestead prior to its conveyance to said P. B. Maxson, and in determining that after the lapse of ten years before any claim of said quarter section as a homestead was made, that such lapse did not estop them from setting up the claim of a homestead of said quarter section of land.

7 Ninth. Said court erred in finding and decreeing that these plaintiffs in error were doing business in the State of Kansas, as corporations, in violation of the laws of the State of Kansas.

Tenth. The court erred in not finding that these plaintiffs in error were engaged in interstate commerce between them and the citizens of Kansas.

Eleventh. The said court erred in refusing to substitute Altman & Miller Buckeye Company for Altman, Miller & Company.

Twelfth. The said court erred in not allowing the suit to proceed to judgment in the name of Altman, Miller & Company for the benefit and use of Altman & Miller Buckeye Company.

Thirteenth. The said court erred in refusing to substitute the Galveston Rope Company for the Galveston Rope & Twine Company.

Fourteenth. The said court erred in not allowing the suit to pro-

ceed to judgment in the name of the Galveston Rope & Twine Company for the benefit and use of the Galveston Rope Company.

Fifteenth. The court erred in dismissing said causes for the reason that these plaintiffs in error were engaged in interstate commerce, and Chapter 125 of the Session Laws of 1901 of the State of Kansas does not apply to said plaintiffs in error.

Sixteenth. The said court erred in dismissing said causes, because said Chapter 125 of the Session Laws of 1901 of the State of Kansas, was made retroactive in its operation by the court.

Seventeenth. Said court erred in dismissing said causes, for the reason that these suits were pending long before said Chapter 125 of the Session Laws of 1901 of the State of Kansas was enacted and became a law.

Eighteenth. Said court erred in dismissing said causes, for the reason that said act, if applied to these cases, is unconstitutional and void, and impairs the obligation of the contract, in violation of the Constatution and laws of the United States.

Nineteenth. Said court erred in dismissing said causes, because the rights of these plaintiffs in error had accrued long before the passage of said Chapter 125 of the Session Laws of 1901 of the State of Kansas, and because said act reserved to these plaintiffs in error, as foreign corporations, all rights that had accrued prior to the passage of said act.

Wherefore the said plaintiffs in error pray the court to reverse the said judgment, decree and order of said court, and order said court to enter judgment for these plaintiffs in error, and each of them, on the findings of fact; and plaintiffs in error Altman & Miller Buckeye Company, Galveston Rope Company, and the Consolidated Steel & Wire Company, pray specially and severally, that the said judgments and decrees may be revoked and set aside as to them, on account of the errors severally set forth and complained of by them herein, and that the said court be ordered to render judgment in their favor.

And all the plaintiffs in error ask for judgment against the defendants in error for costs, and for such other and further relief as may be right and proper in the premises.

M. B. NICHOLSON AND
W. J. PIRTLE,
Attorneys for Plaintiffs in Error.

9 & 10 In the District Court in and for Saline County, State of Kansas.

No. 4209.

BUCK STOVE AND RANGE COMPANY, SAMUEL CUPPLES WOODEN Ware Company, and Altman, Miller & Company, Plaintiffs,

vs.

C. C. VICKERS, MARY P. VICKERS and P. B. MAXSON, Defendants.

And

No. 4160.

CONSOLIDATED STEEL & WIRE COMPANY, ST. LOUIS REFRIGERATOR & Wooden Gutter Company, St. Louis Glass & Queensware Company, and Galveston Rope & Twine Company, Plaintiffs,

vs.

C. C. VICKERS, MARY P. VICKERS and P. B. MAXSON, Defendants.

Filed Apr. 24, 1908.

D. A. VALENTINE,
Clerk Supreme Court.

"EXHIBIT A."

Case Made.

* * * * * * *

11 In the District Court in and for Morris County, State of Kansas.

No. 4209.

THE BUCK STOVE & RANGE COMPANY, a Corporation; SAMUEL Cupples Wooden Ware Company, a Corporation, and Aultman, Miller & Company, a Corporation, Plaintiffs,

vs.

C. C. VICKERS, MARY P. VICKERS, and P. B. MAXSON, Defendants.

Petition.

The plaintiffs say: That the above named plaintiffs, The Buck Stove & Range Company and Samuel Cupples Wooden Ware Company, are each a corporation duly organized, created and incorporated under and by authority of the laws of the State of Missouri, and that the plaintiff, The Aultman, Miller and Company, is a corporation duly organized, created and incorporated under and by virtue of the laws of the State of Ohio, and all these plaintiffs were such corporations at all the times hereinafter mentioned.

The plaintiffs further say, that on the 1st day of November, 1893, the defendant C. C. Vickers was justly indebted to The Buck Stove and Range Company, one of the plaintiffs herein on which said indebtedness said Buck Stove and Range Company on the 19th day of November, 1895, in the District Court in and for Morris County, State of Kansas, recovered a judgment against the said C. C. Vickers for the sum of six hundred and sixty-four and 57/100 Dollars, debt, and for the further sum of $26.15 costs, with interest thereon at the rate of 8% per annum from date of said judgment, which judgment still remains in full force and effect in law, unreversed and unsatisfied; that afterwards and on the 1st day of June, 1896, the said Buck Stove & Range Company caused execution to be issued on said judgment against the property of said C. C. Vickers to each of the sheriffs of Lyon, Chase and Morris counties, in the State of Kansas, which execution for want of goods and chattels of the said C. C. Vickers, were levied as follows:

The sheriff of Morris County levied the execution issued to him on the following described real estate, to-wit: The Northeast Quarter and the East Half of the Southeast Quarter of Section Thirty-six (36) in Township Seventeen (17) Range Nine (9), in Morris County, Kansas. The sheriff of Chase County levied the execution issued to him, on the South Half of the Southeast Quarter and the South half of the Southwest Quarter and Lots one (1) two (2) three (3) four (4) five (5) and six (6), all in Section one (1) Township eighteen (18) Range nine (9), in Chase County, Kansas.

And the Sheriff of Lyon County levied the execution issued to him on the West Half of the Southwest Quarter of Section Thirty (30) in Township Seventeen (17) Range Ten (10), in Lyon County, Kansas, and that all of said several pieces and parcels of land so levied upon as aforesaid are contiguous and compose one tract of land although situated in the three counties aforesaid.

Plaintiff further says that on the first day of November, 1893, the defendant C. C. Vickers, was justly indebted to the plaintiff, Samuel Cupples Wooden Ware Company, one of the plaintiffs herein, on which indebtedness said Samuel Cupples Wooden Ware Company on the 26th day of November, 1895, in the District Court in and for Morris County, Kansas, recovered a judgment against the said C. C. Vickers for the sum of $1125.56 debt, and the further sum of $27.65 costs, with interest thereon at the rate of 8% per annum from date of judgment, which judgment still remains in full force and effect in law, unreversed and unsatisfied; that afterwards said Samuel Cupples Wooden Ware Company on the first day of June, 1896, caused execution to be issued thereon against the property of the said C. C. Vickers to each of the sheriffs of the counties of Lyon, Chase and Morris, in the State of Kansas, which executions said sheriffs, for want of goods and chattels, levied on the lands already described in this petition, and situated in their respective counties as already stated herein. Plaintiffs further say, that on the 2d day of October, 1893, the defendant C. C. Vickers, was justly indebted to Altman, Miller and Company, one of the defendants
12-46 herein, on which said indebtedness said Aultman, Miller and Company on the 19th day of November, 1895, in the

District Court in and for Morris County, Kansas, recovered a judgment against C. C. Vickers for the sum of $1032.38 debt, and the further sum of $54.90 costs, with interest thereon at the rate of 8% per annum from date of said judgment, which judgment still remains in full force and effect in law, unreversed and unsatisfied; that afterwards on the 6th day of January, 1896, said Aultman, Miller and Company caused execution to be issued thereon against the property of C. C. Vickers, to each of the sheriffs of the counties of Lyon, Chase and Morris, in the State of Kansas, which executions said sheriffs, for want of goods and chattels, levied on the lands already described in this petition and situated in their respective counties, as already described herein.

Plaintiffs further say that the said C. C. Vickers is wholly insolvent and has no property liable to execution whereof the plaintiffs herein can make the amount of their several judgments; and the plaintiffs further say that the said C. C. Vickers and Mary P. Vickers, his wife, did on or about the 30th day of June, A. D. 1894, convey the said premises, so as aforesaid levied upon, to the defendant P. B. Maxson, without consideration, and with the intent and for the purpose, as the said P. B. Maxson then well knew of delaying, hindering and defrauding these plaintiffs out of their said claims, and others, the creditors of said C. C. Vickers, out of their just demands and claims against him, the said C. C. Vickers.

Plaintiffs further say that in furtherance of the fraudulent scheme and purpose of hindering, delaying and defrauding these plaintiffs and the other creditors of the said C. C. Vickers out of their just claims, the said P. B. Maxson on or about the — day of ——, 1894, conveyed the West Half (W. ½) of the Southwest Quarter (S. W. ¼) of Section thirty (30) in Township Seventeen (17) Range Ten (10), in Lyon County, Kansas, heretofore described and levied upon by the plaintiffs, to the defendant Mary P. Vickers, the wife of C. C. Vickers and the daughter of said P. B. Maxson, without consideration and with the intent and purpose aforesaid.

The said plaintiffs therefore pray that the said deeds of conveyance from the said C. C. Vickers and Mary P. Vickers, to the said P. B. Maxson, and the deed of conveyance from the said P. B. Maxson to the said Mary P. Vickers may all be declared null and void, and be wholly set aside, and the lands and tenements be ordered to be sold in the manner prescribed by law, and proceeds of said sale be applied to the payment of the judgments of these plaintiffs, together with costs, and for such other and further relief as may be just and equitable in the premises.

[SEAL.] BERTRAM & NICHOLSON
Attorneys for Plaintiffs.

A true copy.
Attest:
C. G. MOORE, *Clerk.*

No. 4209.

In the District Court of Morris County, Kansas.

BUCK STOVE & RANGE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Filed June 13, 1896. C. G. Moore, Clerk; R. M. Armstrong, Deputy.

Deposit for bond $15.00. C. G. Moore, Clerk; R. M. Armstrong, Deputy.

* * * * * * *

17 & 18 Afterwards and on the 16th day of April, 1903, at the regular term of said court, the defendants moved the court to dismiss each of said cases for the reasons set forth in the motion filed in case No. 4160, the said motion and the journal entry overruling the same were and are in words and figures following:

In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Now come the defendants in the above entitled action and move the court to dismiss said action upon the ground and for the reason that the plaintiffs in said action are each and all foreign corporations doing business in this state and that said plaintiffs and each of them have continuously transacted business in this state from the commencement of this action till the present time and that neither of said plaintiffs has complied with any of the provisions of Chapter 10 of the laws of the Special Session of 1898; that neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in said State, and that neither the president and secretary or the managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the condition of such corporation on the 30th day of June next preceding, as required by Section 12, Chapter 10 of the Session Laws of 1898 as amended by Section — of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of State of the State of Kansas, showing that such statements have been filed.

C. B. GRAVES,
I. E. LAMBERT & ALLEN & ALLEN,
Attorneys for Defendants.

* * * * * * *

19 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs.
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of C. C. Vickers.

Now comes the defendant, C. C. Vickers, and for his separate amended and supplemental answer herein says:

1st. That he denies each and every allegation, averment and statement in said petition contained, not hereinafter specifically admitted.

2nd. And for a second and further answer to said petition this defendant says that he admits that he conveyed the real estate mentioned in said petition to the defendant P. B. Maxson, and that afterwards said Maxson conveyed the west half of the northwest quarter of Section 30 Township 17, of Range 10, Lyon County, Kansas, to Mary P. Vickers; that at the time of the aforesaid conveyance to said P. B. Maxson there was a mortgage lien on said land including the land sold to Mary P. Vickers, as aforesaid, to secure a note given by this defendant and said Mary P. Vickers, for the sum of $3000, which mortgage at the time of said conveyance to said Maxson was a first lien to the amount of $3000 upon said real estate.

That at the time of the said conveyance to said Maxson this defendant was in pressing need of money to use in his business, and he made application to said Maxson to obtain a loan, but was unable to obtain the same, but said Maxson offered to buy the said real estate aforesaid, and this defendant sold the same to him. The terms of said sale were: That said Maxson was to assume and pay off the said mortgage of $3000, pay the sum of $1000 cash and give his notes for the sum of $4500.00. The sum of $440, which this defendant then owed him to be credited on said note, making an aggregate consideration for said land of $8500.00, all of which the defendant Maxson has fully paid, this defendant further alleges that the aforesaid sale and conveyance by this defendant and wife to said Maxson was made in good faith for a valuable and adequate consideration and without any purpose or intent to wrong or defraud the plaintiff or any other person.

This defendant admits that he is the husband of Mary P. Vickers and that she is the daughter of P. B. Maxson, and alleges that his said wife has individual property and money to which this defendant had no right and that she purchased the 80 acres mentioned in plaintiffs' petition from her father with the proceeds of such separate property and her individual money, and that this defendant was not and is not interested in said transaction or lands in any way whatever, except as the husband of Mary P. Vickers.

3rd. And this defendant further alleges that of the lands so conveyed by him to the defendant P. B. Maxson the Northeast Quarter of Section 36, Township 17, Range 9, Morris County, Kansas, was at

the time of such conveyance and had been ever since the year 1876 the homestead of this defendant, that said quartersection of land contains 160 acres and had at all times since 1876 been farming land, and was during all said time from 1876 till the date of said conveyance to the defendant Maxson occupied as a resident by the family of this defendant and his wife.

4th. That the several plaintiffs herein, The Buck Stove & Range Co., The Samuel Cupples Wooden Ware Co., and Altman, Miller & Co., are each and all foreign corporations doing business in this state and that said plaintiffs and each of them have continuously transacted business in this state from the time of the commencement of this action till the present time, and that neither of said plaintiffs has complied with any of the provisions of Chapter 10 of the Laws of the Special Session of the Legislature of 1898, or of Chapter 125 of the Laws of 1901, that neither of said corporations had ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in this state, and that neither the President and Secretary or managing officer of either of said plaintiff corporations had ever at any time delivered to the Secretary of State of the State of Kansas a statement of the condition of such corporation on the 30th day of June next preceding, as required by Section 12 of Chapter 10 of the Laws of the Special Session of 1898, or Section 3 of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of State of the State of Kansas showing that such a statement had been filed by either of said plaintiffs. This defendant therefore alleges that the said plaintiffs have not nor has either of them any legal capacity to maintain a suit in any court in the State of Kansas, or to recover any judgment in this action.

Wherefore, This defendant prays judgment against said plaintiffs for his costs herein and for all other proper relief.

CHARLES B. GRAVES &
ALLEN & ALLEN,
Attorneys for C. C. Vickers.

Filed May 1, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of C. C. Vickers.

Now comes the defendant, C. C. Vickers, and for his separate amended and supplemental answer herein, says:

First. That he denies each any every allegation, averment and

statement in said petition contained, not hereinafter specifically admitted.

Second. And for a second and further answer to said petition this defendant says that he admits that he conveyed the real estate mentioned in said petition to the defendant P. B. Maxson and that afterwards said Maxson conveyed the West Half of Section 30, Township 17, Range 10, Lyon County, Kansas, to Mary P. Vickers, that at the time of the aforesaid conveyance to said P. B. Maxson there was a mortgage lien on said land including the land sold to Mary P. Vickers as aforesaid, to secure a note given by this defendant and said Mary P. Vickers for the sum of $3,000.00 which mortgage at the time of said conveyance to said Maxson was a first lien to the amount of $3,000.00 upon said real estate.

That at the time of said conveyance to said Maxson this defendant was in pressing need of money to use in his business and he made application to said Maxson to obtain a loan but was unable to obtain the same but said Maxson offered to buy the real estate aforesaid and this defendant sold the same to him. The terms of said sale were: That said Maxson was to assume and pay off said mortgage of $3,000.00, pay the sum of $1,000.00 cash, and give his note for $4500.00. The sum of $440, which this defendant then owed him to be credited on said note, making an aggregate consideration for said land of $8500.00, all of which the defendant Maxson has fully paid, this defendant further alleges that the aforesaid sale and conveyance by this defendant and wife to said Maxson was made in good faith, for a valuable and adequate consideration and without any purpose or intent to wrong or defraud the plaintiffs or any other persons.

This defendant admits that he is the husband of Mary P. Vickers and that she is the daughter of P. B. Maxson, and alleges that his said wife had individual property and money to which this defendant had no right, and that she purchased the 80 acres mentioned in plaintiffs' petition from her father with the proceeds of such separate property, and her individual money, and that this defendant was not and is not interested in said transaction or lands in any way whatever, except as the husband of said Mary P. Vickers.

3rd. And this defendant further alleges that of the lands so conveyed by him to the defendant P. B. Maxson the Northeast Quarter of Section 36, Township 17, Range 9, in Morris County, Kansas, was at the time of said conveyance and had been ever since the year 1876 the homestead of this defendant; that said quarter section of land contains one hundred and sixty acres, and has at all times since 1876 been farming land and was during all of said time from 1876 till the date of said conveyance to the defendant Maxson occupied as a residence by the family by this defendant and his wife.

4th. That the several plaintiffs herein, The Consolidated Steel & Wire Company, The St. Louis Glass & Queensware Co., The Galveston Rope & Twine Co., and the St. Louis Refrigerator & Wooden Gutter Co., are each and all foreign corporations doing business in this state, and that said plaintiffs and each of them have continuously transacted business in the State of Kansas from the time of the com-

mencement of this action till the present time and that neither of said plaintiffs have complied with any of the provisions of
22 Chapter 10 of the Laws of the Special Session of the Legislature of 1898, or of Chapter 125 of the Laws of 1901, and neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in this State, and that neither President and Secretary or managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the conditions of such corporations on the 30th day of June next preceding as required by Section 12 of Chapter 10 of the Laws of the Special Session of 1898, or Section 3 of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of State of the State of Kansas, showing that such a statement had been filed by either of said plaintiffs. This defendant therefore alleges that the said plaintiffs have not nor has either of them any legal capacity to maintain a suit in any court of the State of Kansas, or to recover any judgment in this action.

Wherefore this defendant prays judgment against said plaintiffs for his costs herein, and for all other proper relief.

CHARLES B. GRAVES,
ALLEN & ALLEN,
Attorneys for C. C. Vickers.

(Endorsed:) Filed May 1, 1905. Chas. W. Johnson, Clerk Dist. Court.

23 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of P. B. Maxson.

Now comes the defendant P. B. Maxson, and for his amended and supplemental separate answer herein says:

1st. That he denies each and every allegation, averment and statement in said petition contained, not hereinafter specifically admitted.

2. This defendant admits that he is the father of the defendant Mary P. Vickers and that she is the wife of the defendant C. C. Vickers. He further admits that the defendant C. C. Vickers and Mary P. Vickers did on or about the 30th day of June, 1894, convey to this defendant by deed of general warranty the real estate first described in the plaintiff's petition herein and that the plaintiff caused execution to be levied on said real estate as the property of the defendant C. C. Vickers, as alleged in the petition herein. The defendant further admits that on or about the — day of September, 1894, he conveyed the west half of the southwest quarter of Section

30 in Township 17 of Range 10, Lyon County, Kansas, to the defendant, Mary P. Vickers.

This defendant alleges that prior to June 30, 1894, the defendant C. C. Vickers was indebted to this defendant in the sum of about $440 for money before that time loaned to him, and at that time said defendant made application to this defendant for a further loan, which this defendant did not desire to make, and thereupon this defendant proposed to purchase the real estate of said defendant which is first described in the petition herein. At that time there was a mortgage on said land given to secure a note made by said Vickers and wife for the sum of $3,000, which mortgage was a first lien on said land. This defendant offered to buy said land and to pay therefor the *sum* of $8500.00, including said mortgage which he was to assume and pay. This offer was accepted and the conveyance was made and this defendant has paid said consideration in full.

That afterward the defendant, Mary P. Vickers, bought of this defendant the west half of the southwest quarter of Section 30, Township 17, of Range 10, in Lyon County, Kansas, for which she paid a full, fair and adequate consideration and said payment was made by her as this defendant understood out of her own individual and separate estate in and to which the defendant C. C. Vickers had no right or interest.

That each of the aforesaid transactions and conveyances were made in good faith by this defendant without any purpose or intent to cheat, wrong or defraud the plaintiff or any other person; that the amount paid by this defendant for said real estate as aforesaid was a full, fair and adequate consideration therefor.

This defendant further alleges that the levy of said execution upon said real estate was and is wrongful and injurious to the rights of this defendant and he has been greatly damaged thereby; That said plaintiffs before the commencement of this suit caused writs of attachment to be issued and levied upon the aforesaid real estate as the property of said C. C. Vickers, all of which were wrongful and injurious to this defendant.

3. And this defendant further alleges that of the lands so conveyed by the defendants C. C. Vickers and Mary P. Vickers, to him the northeast quarter of Section 36, Township 17, Range 9, in Morris County, Kansas, was at the time of such conveyance and had been ever since the year 1896, the homestead of the said C. C. Vickers and Mary P. Vickers. That said quarter section of land contains 160 acres in extent and is and at all times has been since the year 1876 *has been* farming land, and was during all the time from 1876 till the time of its conveyance to this defendant as aforesaid occupied as a residence by the family of the said C. C. Vickers.

4. That the several plaintiffs herein, The Buck Stove & Range Co., The Samuel Cupples Wooden Ware Co., and Altman, Miller & Co., are each and all foreign corporations doing business in this state, and that said plaintiffs and each of them continuously transacted business in this State from the time of the commencement of this action until the present time, and that neither of said plaintiffs has complied with any of the provisions of Chapter

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10 of the Laws of the Special Session of the Legislature of 1898, or of Chapter 125 of the Laws of 1901; that neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in said State, and that neither the President and Secretary or managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the conditions of such corporations on the 30th day of June, next preceding, as required by Section 12, Chapter 10 of the Session Laws of 1898, as amended by Section 3 of Chapter 125 of the Laws of 1901; and that no certificate was ever issued by the Secretary of State of the State of Kansas showing that such a statement had been filed by either of said plaintiffs. This defendant therefore alleges that the said plaintiffs have not nor has either of them any legal capacity to maintain a suit in any court in the State of Kansas, or to recover any judgment in this action.

Wherefore, this defendant prays that his right and title to said real estate be quieted as against said plaintiffs and each of them; that the levies of said attachments and execution on said land be adjudged illegal, void and of no effect, and be released and discharged, and that this defendant have and recover his costs herein, and such other and further relief as is consistent with equity.

CHARLES B. GRAVES &
ALLEN & ALLEN,
Attorneys for P. B. Maxson, Defendant.

Filed May 1, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

25 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of P. B. Maxson.

Now comes the defendant P. B. Maxson, and for his amended and supplemental separate answer herein says:

1st. That he denies each and every allegation, averment and statement in said petition contained, not hereinafter specifically admitted.

2. This defendant admits that he is the father of the defendant Mary P. Vickers and that she is the wife of the defendant C. C. Vickers. He further admits that the defendant C. C. Vickers and Mary P. Vickers did on or about the 30th day of June, 1894, convey to this defendant by deed of general warranty the real estate first described in the plaintiffs' petition herein and that the plaintiff caused execution to be levied upon said real estate as the property of the de-

fendant C. C. Vickers, as alleged in the petition herein. The defendant further admits that on or about the — day of September, 1894, he conveyed the West Half of the southwest quarter of Section 30 in Township 17 of Range 10, Lyon County, Kansas, to the defendant, Mary P. Vickers.

This defendant alleges that prior to June 30, 1894, the defendant C. C. Vickers was indebted to this defendant in the sum of about $440 for money before that time loaned to him, and at that time said defendant made application to this defendant for a further loan, which this defendant did not desire to make, and thereupon this defendant proposed to purchase the real estate of said defendant which is first described in the petition herein. At that time there was a mortgage on said land given to secure a note made by said Vickers and wife for the sum of $3,000, which mortgage was a first lien on said land. This defendant offered to buy said land and to pay therefor the sum of $8500.00, including said mortgage which he was to assume and pay. This offer was accepted and the conveyance was made and this defendant has paid said consideration in full.

That afterward the defendant, Mary P. Vickers, bought of this defendant the West Half of the Southwest Quarter of Section 30, Township 17, of Range 10, in Lyon County, Kansas, for which she paid a full, fair and adequate consideration and said payment was made by her as this defendant understood out of her own individual and separate estate in and to which the defendant C. C. Vickers had no right or interest.

That each of the aforesaid transactions and conveyances were made in good faith by this defendant without any purpose or intent to cheat, wrong or defraud the plaintiff or any other person; that the amount paid by this defendant for said real estate as aforesaid was a full, fair and adequate consideration therefor.

This defendant further alleges that the levy of said execution upon said real estate was and is wrongful and injurious to the rights of this defendant and he has been greatly damaged thereby; That said plaintiffs before the commencement of this suit caused writs of attachment to be issued and levied upon the aforesaid real estate as the property of said C. C. Vickers, all of which were wrongful and injurious to this defendant.

3. And this defendant further alleges that of the lands so conveyed by the defendants C. C. Vickers and Mary P. Vickers, to him the northeast Quarter of Section 36, Township 17, Range 9, in Morris County, Kansas, was at the time of such conveyance and had been ever since the year 1876, the homestead of the said C. C. Vickers and Mary P. Vickers. That said Quarter section of land contains 160 acres in extent and is and at all times has been since the year 1876 *has been* farming land, and was during all the time from 1876 till the time of its conveyance to this defendant as aforesaid occupied as a residence by the family of the said C. C. Vickers.

4. That the several plaintiffs herein, The Consolidated Steel & Wire Co., The St. Louis Glass & Queensware Co., The Galveston Rope & Twine Co., and The St. Louis Refrigerator & Wooden Gutter Company, are each and all foreign corporations doing business in

this state, and that said plaintiffs and each of them continuously transacted business in this state from the time of the commencement of this action until the present time, and that neither of the said plaintiffs has complied with any of the provisions of Chapter 10 of the Laws of the Special Session of the Legislature of 1898, or Chapter 125 of the Laws of 1901; that neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in said State, and that neither the President and Secretary or managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the condition of such corporations on the 30th day of June, next preceding, as required by Section 12, Chapter 18 of the Session Laws of 1898, as amended by Section 3 of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of State of the State of Kansas showing that such a statement had been filed by either of said plaintiffs. This defendant therefore alleges that the said plaintiffs have not nor has either of them any legal capacity to maintain a suit in any court in the State of Kansas, or to recover any judgment in this action.

Wherefore, This defendant prays that his right and title to said real estate be quieted as against said plaintiffs, and each of them; the levies of said attachments and execution on said land be adjudged illegal, void and of no effect, and he released and discharged, and that this defendant have and recover his costs herein and such other and further relief as is consistent with equity.

CHARLES B. GRAVES &
ALLEN & ALLEN,
Attorneys for P. B. Maxson, Defendant.

Filed May 1, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of Mary P. Vickers.

Now comes the defendant Mary P. Vickers and for her separate amended and supplemental answer herein says:

1st. That she denies each and every allegation, averment and statement in said petition contained not hereinafter specifically admitted.

2nd. Said defendant admits that she is the daughter of the defendant P. B. Maxson and the wife of the defendant C. C. Vickers,

and that she jointly with her husband C. C. Vickers executed a conveyance to her said father of the real estate mentioned and first described in the plaintiffs' petition and that her father afterwards conveyed to her the West Half of the Southwest Quarter of Section 30, Township 17 of Range 10 in Lyon County, Kansas. That at the time of the conveyance to the defendant P. B. Maxson of said land there was a mortgage lien thereon of the sum of $3000 securing a not for $3000 made by this *plaintiff* and her husband.

This defendant further alleges that the eighty acres of said land which she afterwards received from her father as aforesaid was purchased by her from him for an adequate consideration and was paid for out of money and property which belonged exclusively to this defendant. That each of the transactions aforesaid *were* bona fide and without any design or purpose to wrong or defraud the plaintiffs herein or any other person so far as this defendant is concerned, that said land was sold to the defendant P. B. Maxson because this defendant's husband was pressed for money to use in his business and could not procure a loan on said land because of the mortgage already on it. Said P. B. Maxson proposed to buy said land and it was sold and conveyed to him on the following terms: He assumed the payment of the mortgage debt of $3000, paid $1000 in cash and gave his notes for $4500 on which the sum of $440 which the defendant C. C. Vickers was indebted to said Maxson was credited.

3rd. This defendant further alleges that of the land so conveyed by this defendant and her husband to said P. B. Maxson the Northeast Quarter of Section 36, Township 17, Range 9, in Morris County, Kansas, was at the time of such conveyance and had been ever since the year 1876 the homestead of this defendant and her husband C. C. Vickers, that said homestead consisted of one hundred and sixty acres of farming land which was during all the time from 1876 till the date of its conveyance to the defendant P. B. Maxson occupied as a residence by the family of the said C. C. Vickers.

4th. That the several plaintiffs herein, The Consolidated Steel & Wire Co., The St. Louis Glass & Queensware Co., The Galveston Rope & Twine Co., and The St. Louis Refrigerator & Wooden Cutter Co., are each and all foreign corporations doing business in this state and that said plaintiffs and each of them have continuously transacted business in this state from the time of the commencement of this action till the present time, and that neither of said plaintiffs *have* complied with any of the provisions of Chapter 10 of the laws of the Special Session of 1898 or of Chapter 125 of the Laws of 1901, that neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in this State, and that neither the President and Secretary or managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the conditions of said corporations on the 30th day of June, next preceding, as required by Section 12, Chapter 10 of the Session Laws of 1898 as amended by Section 3 of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of the State of Kansas showing that such a statement had

en filed by either of said plaintiffs. This defendant therefore leges that the said plaintiffs have not nor has either of them any gal capacity to maintain a suit in any court in the State of Kansas, or to recover any judgment in this action.

Wherefore, This defendant prays judgment for the costs of this action and for such further relief as is consistent with quity.

CHARLES B. GRAVES AND
ALLEN & ALLEN,
Attorneys for Defendant Mary P. Vickers.

Filed May 1, 1905.
CHAS. W. JOHNSON,
Clerk District Court.

In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs
vs.
C. C. VICKERS et al., Defendants.

Amended and Supplemental Answer of Mary P. Vickers.

Now comes the defendant Mary P. Vickers and for her separate amended and supplemental answer herein says:

1st. That she denies each and every allegation, averment and statement in said petition contained not hereinafter specifically admitted.

2nd. Said defendant admits that she is the daughter of the defendant P. B. Maxson and the wife of the defendant C. C. Vickers, and that she jointly with her husband C. C. Vickers executed a conveyance to her said father of the real estate mentioned and first described in the plaintiffs' petition and that her father afterwards conveyed to her the west half of the southwest quarter of Section 30, Township 17 of Range 10 in Lyon County, Kansas. That at the time of the conveyance to the defendant P. B. Maxson of said land there was a mortgage lien thereon of the sum of $3000 securing a note for $3000 made by this defendant and her husband.

This defendant further alleges that the eighty acres of said land which she afterwards received from her father as aforesaid was purchased by her from him for an adequate consideration and was paid for out of money and property which belonged exclusively to this defendant. That each of the transactions aforesaid *were* bona fide and without any design or purpose to wrong or defraud the plaintiffs herein or any other person so far as this defendant is concerned, that said land was sold to the defendant P. B. Maxson because this defendant's husband was pressed for money to use in his business and could not procure a loan on said land because of the mortgage

already on it. Said P. B. Maxson proposed to buy said land and it was sold and conveyed to him on the following terms: He assumed the payment of the mortgage debt of $3000, paid $1000 in cash and gave his notes for $4500 on which the sum of $440 which the defendant C. C. Vickers was indebted to said Maxson was credited.

3rd. This defendant further alleges that of the land so conveyed by this defendant and her husband to the said P. B. Maxson the Northeast Quarter of Section 36, Township 17, Range 9, in Morris County, Kansas, was at the time of such conveyance and had been ever since the year 1876 the homestead of this defendant and her husband C. C. Vickers, that said homestead consisted of one hundred and sixty acres of farming land which was during all the time from 1876 till the date of its conveyance to the defendant P. B. Maxson occupied as a residence by the family of the said C. C. Vickers.

4th. That the several plaintiffs herein, The Buck Stove & Range Co., The Samuel Cupplies Wooden Ware Co., and Altman Miller & Co., are each and all foreign corporations doing business in this state and that said plaintiffs and each of them have continuously transacted business in this state from the time of the commencement of this action till the present time, and that neither of said plaintiffs *have* complied with any of the provisions of Chapter 10 of the Laws of the Special session of 1898 or of Chapter 125 of the Laws of 1901, that neither of said corporations has ever applied for or obtained from the Charter Board of the State of Kansas any authority to do business in this State, and that neither the President and Secretary or managing officer of either of said plaintiff corporations has ever at any time delivered to the Secretary of State of the State of Kansas a statement of the conditions of said corporations on the 30th day of June, next preceding, as required by Section 12, Chapter 10 of the Session Laws of 1898 as amended by Section 3 of Chapter 125 of the Laws of 1901, and that no certificate was ever issued by the Secretary of the State of Kansas showing that such a statement had been filed by either of said plaintiffs. This defendant therefore alleges that the said plaintiffs have not nor has either of them any legal capacity to maintain a suit in any court in the State of Kansas, or to recover any judgment in this action.

30 Wherefore, this defendant prays judgment for the costs of this action and for such further relief as is consistent with equity.

CHARLES B. GRAVES AND
ALLEN & ALLEN,
Attorneys for Defendant Mary P. Vickers.

Filed May 1, 1905.

CHAS. W. JOHNSON,
Clerk Dist. Court.

31 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of Mary P. Vickers.

Come now the plaintiffs and for reply to the amended and supplemental answer of Mary P. Vickers, say that they deny each and every allegation set forth and contained in said answer, save and except the admissions therein made.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the Constitution *of* the laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the State in which the home office of these plaintiffs were and are located; that said traveling men are given orders by merchants and purchasers in the State of Kansas, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by the plaintiffs at their respective places of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were purchased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs shipped into the State of Kansas were shipped according to the provisions of the constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling men as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the State of Missouri, as interstate commerce under the constitution and laws of the United States of America, save and except such goods as were supplied to said C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Galveston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company never sold at any time, before nor since the commencement of this action, any goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.
By H. C. JAGGARD, *Dept.*

32 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended Reply to the Amended and Supplemental Answer of Mary P. Vickers.

Come now the plaintiffs and for their amended reply to the amended and supplemental answer of Mary P. Vickers say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the constitution and laws of the United States of America: That these plaintiffs are all foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the states in which the home office of these plaintiffs were and are located: that said traveling men are given orders by merchants and purchasers, and before said goods are sold and shipped to said business men in the State of Kansas, said orders must be approved and accepted by the plaintiffs at their respective places of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were purchased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs at any time, shipped into the State of Kansas, were shipped according to the provisions of the constitution of the United States and the laws of the United States of America, regulating commerce between the various states, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for

he sale of their goods, save and except as already stated, through raveling men, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in heir petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of he goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the state of Texas from the State of Missouri, as interstate commerce under the constitution and laws of the United States of America, save and except such goods as were shipped and supplied to said defendant C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Galveston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company never sold at any time, before nor since the commencement of this action, any goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Plaintiffs further say that this suit was commenced on June 13, 1896, in this court, a long time before Chapter 10 of the Special Act of the Legislature of 1898 was passed, or Chapter 125 of the Laws of 1901 was passed; that said laws are not applicable to the rights of these plaintiffs in prosecuting this suit to secure their rights against the defendants herein in the premises; and the plaintiffs further say that so far as these plaintiffs are concerned, engaged as they are in interstate commerce, only, with the people of the State of Kansas, to apply said laws to them in this suit would contravene the constitution and laws of the United States of America regulating commerce with foreign nations and between the various states.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed June 2, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

33 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of Mary P. Vickers.

Come now the plaintiffs and for reply to the amended and supplemental answer of Mary P. Vickers, say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce according to the Constitution and Laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the state of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas from the States of Missouri and Ohio to take orders for the sale of their goods for shipment into Kansas from the states of Missouri and Ohio, according to the various location of the home offices of these plaintiffs; that said traveling men are given orders by merchants and purchasers in the State of Kansas to these plaintiffs, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by these plaintiffs at their respective places of business in the states of Missouri and Ohio, as alleged herein, of which states they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs into the state of Kansas were purchased and sold under Missouri and Ohio contracts, and all the goods that these plaintiffs at any time shipped into the State of Kansas were shipped according to the provisions of the Constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling salesmen, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, or any part of it, but were shipped into the State of Texas, from the States of Missouri and Ohio, as interstate commerce, under the Constitution and the laws of the United States of America, and were so shipped in the years of 1892 and 1893.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.

CHAS. W. JOHNSON,
Clerk Dist. Court.
By H. C. JAGGARD, *Dept.*

In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of P. B. Maxson.

Come now the plaintiffs and for reply to the amended and supplemental answer of P. B. Maxson say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the constitution and laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the state in which the home office of these plaintiffs were and are located; that said traveling men are given orders by merchants and purchasers in the State of Kansas, and before said goods are sold and shipped to said business men in the State of Kansas *said* orders must be approved and accepted by the plaintiffs at their respective places of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were purchased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs shipped into the State of Kansas were shipped according to the provisions of the constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling men as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the State of Missouri, as interstate commerce under the constitution and *laws* of the United States of America, save and except such goods as were supplied to said defendant C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Galveston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company

never sold at any time, before nor since the commencement of this action, any goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court,
By H. C. JAGGARD, *Dept.*

35 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of P. B. Maxson.

Come now the plaintiffs and for reply to the amended and supplemental answer of P. B. Maxson, say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the constitution and laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas from the States of Missouri and Ohio to take orders for the sale of their goods for shipment into Kansas from the states of Missouri and Ohio, according to the various location of the home offices of these plaintiffs; that said traveling men are given orders by merchants and purchasers in the State of Kansas to these plaintiffs, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by these plaintiffs at their respective places of business in the states of Missouri and Ohio, as alleged herein, of which states they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs into the State of Kansas were purchased and sold under Missouri and Ohio contracts, and all the goods that these plaintiffs at any time shipped into the State of Kansas were shipped according to the provisions of the constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of *the*

of them ever had an office or an agent in the state of Kansas for the sale of their goods, save and except as already stated, through traveling salesmen, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, or any part of it, but were shipped into the State of Texas, from the states of Missouri and Ohio, as interstate commerce under the constitution and the laws of the United States of America, and were so shipped in the years of 1892 and 1893.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court,
By H. C. JAGGARD, *Dept.*

36 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of C. C. Vickers.

Come now the plaintiffs and for reply to the amended and supplemental answer of C. C. Vickers, say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for further reply say that they deny that that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the Constitution and Laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the State in which the home office of these plaintiffs were and are located; in that said traveling men are given orders by merchants and purchasers in the State of Kansas, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by the plaintiffs at their respective places of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were pur-

chased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs shipped into the State of Kansas were shipped according to the provisions of the constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling men as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contradicted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the State of Missouri, as interstate commerce under the constitution and laws of the United States of America, save and except such goods as were supplied to said defendant C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Galveston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company never sold at any time, before nor since the commencement of this action, any goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.
By H. C. JAGGARD, *Dept.*

37 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO., et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Reply to the Amended and Supplemental Answer of C. C. Vickers.

Come now the plaintiffs and for reply to the amended and supplemental answer of C. C. Vickers say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce according to the constitution and laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in

their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas from the states of Missouri and Ohio to take orders for the sale of their goods for shipment into Kansas from the States of Missouri and Ohio, according to the various locations of the home offices of these plaintiffs; that said traveling men are given orders by merchants and purchasers in the State of Kansas to these plaintiffs, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by these plaintiffs at their respective places of business in the states of Missouri and Ohio, as alleged herein, of which states they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs into the State of Kansas were purchased and sold under Missouri and Ohio contracts, and all the goods that these plaintiffs at any time shipped into the State of Kansas were shipped according to the provisions of the constitution of the United States and rules and regulations under and by virtue of the laws of the United States of America, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling salesmen, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, or any part of it, but were shipped into the State of Texas from the states of Missouri and Ohio, as interstate commerce, under the constitution and the laws of the United States of America, and were so shipped in the years of 1892 and 1893.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed May 13, 1905.
C. W. JOHNSON,
Clerk Dist. Court.
By H. C. JAGGARD, *Deputy.*

38 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended Reply to the Amended and Supplemental Answer of C. C. Vickers.

Come now the plaintiffs and for amended reply to the amended and supplemental answer of C. C. Vickers say that they deny each

and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce according to the Constitution and laws of the United States of America; that these plaintiffs are foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the state of Kansas from the States of Missouri and Ohio to take orders for the sale of their goods for shipment into Kansas from the states of Missouri and Ohio, according to the various locations of the home offices of these plaintiffs, that said traveling men are given orders by merchants and purchasers in the State of Kansas to these plaintiffs, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by these plaintiffs at their respective places of business in the States of Missouri and Ohio, as alleged herein, of which states they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs in the State of Kansas were purchased and sold under Missouri and Ohio contracts, and all the goods that these plaintiffs at any time shipped into the State of Kansas were shipped according to the provisions of the Constitution of the United States and the laws of the United States of America regulating commerce between the various states and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except, as already stated, through traveling salesmen as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business at Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the states of Missouri and Ohio, as interstate commerce under the Constitution and the laws of the United States of America, and were so shipped in the years of 1892 and 1893.

Plaintiffs further say that this suit was commenced on June 13, 1896, in this court, a long time before Chapter 10 of the Special act of the Legislature of 1898 was passed, or Chapter 125 of the Laws of 1901 was passed; that said laws are not applicable to the rights of these plaintiffs in prosecuting said suit to secure their rights against the defendants herein in the premises; and the plaintiffs further say that so far as these plaintiffs are concerned, engaged as they are in interstate commerce only with the State of Kansas, to apply said laws to them in this suit would contravene the Constitution and Laws of the United States of America regulating commerce with foreign nations and between the various states.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

(Endorsed:) Filed June 2, 1905. Chas. W. Johnson, Clerk District Court.

39 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE Co. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended Reply to the Amended and Supplemental Answer of C. C. Vickers.

Come now the plaintiffs and for their amended reply to the amended and supplemental answer of C. C. Vickers say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in inter-state commerce, according to the constitution and laws of the United States of America; that these plaintiffs are all foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the state in which the home office of the plaintiffs were and are located; that said traveling men are given orders by merchants and purchasers, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by the plaintiffs at their respective places of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were purchased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs, at any time, shipped into the State of Kansas, were shipped according to the provisions of the constitution of the United States and *and* the laws of the United States of America, regulating commerce between the various states, and these plaintiffs *and these plaintiffs* and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling men, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the State of Missouri, as interstate commerce under the constitution and laws of the United States of America, save and except such goods as were shipped and supplied to said defendant C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Gal-

veston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company never sold at any time, before nor since the commencement of this action, and goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Plaintiffs further say that this suit was commenced on June 13, 1896, in this court, a long time before Chapter 10 of the Special Act of the Legislature of 1898 was passed, or Chapter 125 of the Laws of 1901 was passed; that said laws are not applicable to the rights of these plaintiffs in prosecuting this suit to secure their rights against the defendants herein in the premises, and the plaintiffs further say that so far as these plaintiffs are concerned, engaged as they are in interstate commerce, only, with the people of the State of Kansas, to apply said laws to them in this suit would contravene the constitution and laws of the United States of America regulating commerce with foreign nations and between the various states.

Wherefore, plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed June 2, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

40 In the District Court of Morris County, Kansas.

No. 4160.

THE CONSOLIDATED STEEL & WIRE CO. et als., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended Reply to the Amended and Supplemental Answer of P. B. Maxson.

Come now the plaintiffs and for their amended reply to the amended and supplemental answer of P. B. Maxson say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the Constitution and Laws of the United States of America; that these plaintiffs are all foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas to take orders for the sale of goods for shipment into Kansas from the state in which the home offices of the plaintiffs were and are

located; that said traveling men are given orders by merchants and purchasers, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by the plaintiffs at their respective place of business in the state whereof they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs were purchased and sold under Missouri and Texas contracts, and all the goods that these plaintiffs, at any time, shipped into the State of Kansas, were shipped according to the provisions of the Constitution of the United States and the laws of the United States of America, regulating commerce between the various states, and these plaintiffs and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except as already stated, through traveling salesmen, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the State of Missouri, as interstate commerce under the constitution and laws of the United States of America, save and except such goods as were shipped and supplied to said defendant C. C. Vickers at Wichita Falls, Texas, by the Galveston Rope & Twine Company, which has its office and place of business at Galveston, Texas. All of said goods were shipped in the years 1892 and 1893.

Plaintiffs further say that the Galveston Rope & Twine Company never sold at any time, before nor since the commencement of this action, any goods of any kind or nature in the State of Kansas, and never had any traveling men soliciting business as interstate commerce or any other kind of business within the State of Kansas.

Plaintiffs further say that this suit was commenced on June 13, 1896, in this court, a long time before Chapter 10 of the Special Act of the Legislature of 1898 was passed, or Chapter 125 of the Laws of 1901 was passed; that said laws are not applicable to the rights of these plaintiffs in prosecuting this suit to secure their rights against the defendants herein in the premises, and the plaintiffs further say that so far as these plaintiffs are concerned, engaged as they are in interstate commerce, only, with the people of the State of Kansas, to apply said laws to them in this suit would contravene the constitution and laws of the United States of America regulating commerce with foreign nations and between the various states.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed June 2, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

41-48 In the District Court of Morris County, Kansas.

No. 4209.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amended Reply to the Amended and Supplemental Answer of P. B. Maxson.

Come now the plaintiffs and for amended reply to the amended and supplemental answer of P. B. Maxson say that they deny each and every allegation set forth and contained in said answer, save and except the admissions made therein.

Plaintiffs for a further reply say that they deny that these plaintiffs, or any of them, are or were at any time doing business in the State of Kansas, save and except they are engaged in interstate commerce, according to the Constitution and Laws of the United States of America; that these plaintiffs are all foreign corporations, as alleged in their petition, and their mode of transacting business with the people of the State of Kansas is and has been at all times herein mentioned by sending their traveling men into the State of Kansas from the states of Missouri and Ohio to take orders for the sale of their goods for shipment into Kansas from the States of Missouri and Ohio, according to the various locations of the home offices of these plaintiffs; that said traveling men are given orders by merchants and purchasers in the State of Kansas to these plaintiffs, and before said goods are sold and shipped to said business men in the State of Kansas said orders must be approved and accepted by these plaintiffs at their respective places of business in the states of Missouri and Ohio, as alleged herein, of which states they are citizens, and that the purchase and sale of all the goods shipped by these plaintiffs into the State of Kansas were purchased and sold under Missouri and Ohio contracts, and all the goods that these plaintiffs at any time shipped into the State of Kansas were shipped according to the provisions of the constitution af the United States and the laws of the United States of America, regulating commerce between the various states and these plaintiffs, and neither of them ever had an office or an agent in the State of Kansas for the sale of their goods, save and except, as already stated, through traveling salesmen, as aforesaid.

Plaintiffs further say that all the debts mentioned and set out in their petition herein were contracted by defendant C. C. Vickers while he was doing business in Wichita Falls, Texas, and none of the goods for which judgments have been obtained by them were ever shipped into the State of Kansas, but were shipped into the State of Texas from the states of Missouri and Ohio, as interstate commerce under the constitution and the laws of the United States of America, and were so shipped in the years of 1892 and 1893.

Plaintiffs further say that this suit was commenced on June 13, 1896, in this court, a long time before Chapter 10 of the Special Act of the Legislature of 1898 was passed, or Chapter 125 of the Laws of 1901 was passed; that said laws are not applicable to the rights of these plaintiffs in prosecuting this suit to secure their rights against the defendants herein in the premises, and the plaintiffs further say that so far as these plaintiffs are concerned, engaged as they are in interstate commerce, only, with the people of the State of Kansas, to apply said laws to them in this suit would contravene the constitution and laws of the United States of America regulating commerce with the foreign nations and between the various states.

Wherefore, Plaintiffs ask judgment as prayed for in their petition.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

Filed June 2, 1905.
CHAS. W. JOHNSON,
Clerk Dist. Court.

* * * * * * *

49-114 In the District Court of Saline County, Kansas.

THE CONSOLIDATED STEEL & WIRE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Amendment to Answer of P. B. Maxson.

Now comes the defendant, P. B. Maxson, and by leave of the court, for an amendment to his amended and supplemental answer heretofore filed herein refers to, reiterates and adopts all of the statements, allegations, matters and things set forth and contained in said amended and supplemental answer, and for a further answer herein denies that the Galveston Rope and Twine Company, named as one of the plaintiffs in this action was at the time of the commencement of this action the real party in interest herein, and denies that said Galveston Rope & Twine Company is or has been at any time since the first day of January, 1897, a corporation, and denies that it has at any time since January 1st, 1897, had legal capacity to act as a corporation or to maintain this suit as such. And this defendant further alleges that in the year 1896 the said Galveston Rope & Twine Company forfeited its corporate franchise by reason of its failure and refusal to pay the franchise tax for the year 1896 required by the laws of the State of Texas, which was the State from which it derived its alleged corporate powers.

I. E. LAMBERT &
ALLEN & ALLEN,
Attorneys for Defendant P. B. Maxson.

STATE OF KANSAS,
County of Saline, ss:

P. B. Maxson being first duly sworn, deposes and says: That he is the defendant above named who makes the foregoing answer and that he believes the matters and things stated in the foregoing amendment to his answer in the above entitled action to be true.

P. B. MAXSON.

Subscribed and sworn to before me this 23d day of May, 1906. My com. expires April 3, 1910.

HENRIETTA M. GEISSLER,
Notary Public.

Filed, May 23, 1906.
ALEX. HEDERSTEDT,
Clerk Dist. Court.

* * * * * * *

115–169 No. 7354.

Filed Nov. 5, 1898. I. T. Harell, Clerk.

Plaintiff then introduced the following admission in evidence.

It is admitted that the original suit in this case, The Buck Stove and Range Company against C. C. Vickers was commenced August 27, 1894.

That the suit of Samuel Cupples Wooden Ware Company against C. C. Vickers was commenced December 29, 1894.

That the suit of Aultman Miller Company vs. C. C. Vickers was commenced January 7, 1895.

That the suit of the Consolidated Steel and Wire Company vs. C. C. Vickers was commenced April 29, 1895.

That the suit of The St. Louis Glass and Queensware Company vs. C. C. Vickers, was commenced —.

That the suit of the St. Louis Refrigerator & Wooden Gutter Company vs. C. C. Vickers was commenced January 8, 1895.

That the suit of the Galveston Rope and Twine Company vs. C. C. Vickers was commenced May 25, 1895. See p. 134.

* * * * * * *

170 In the District Court of Saline County, Kansas.

Journal Entry.

(Omitting heading.)

Dated March 26, 1907.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Findings of Fact.

1. None of the plaintiffs in either case has filed annual statements with the Secretary of State of the State of Kansas, or complied in any other respect with the laws of the State of Kansas relating to foreign corporations.

2. The plaintiffs, the Buck Stove & Range Co., Samuel Cupples Woodenware Co., St. Louis Refrigerator and Wooden Gutter Co., and St. Louis Glass & Queensware Co., are each foreign corporations, organized under the laws of the State of Missouri, and are still going concerns.

3. The Buck Stove & Range Co., has ever since 1901 employed traveling salesmen who reside in Kansas to solicit orders for goods from dealers in Kansas by calling at their respective places of business and the orders taken by them were forwarded to said Company at St. Louis, Mo., its headquarters, for approval, and if the account was approved the order was filled at St. Louis and the goods shipped to the buyer in Kansas. Payments for the goods so purchased were made by remittance direct from the purchasers to the house at St. Louis.

4. The Samuel Cupples Woodenware Co., the St. Louis Refrigerator & Wooden Gutter Co., the St. Louis Glass & Queensware Co., have each of them ever since 1901, been sending traveling salesmen into this state, who took orders from citizens of Kansas, dealing in their products, and sent them to their respective houses at St. Louis. If the orders were approved at headquarters, the goods were shipped to the customers in Kansas, and were paid for by them by remitting directly to the sellers at St. Louis.

5. The Consolidated Steel & Wire Co., was a foreign corporation and between 1898 and January 1st, 1901, sent its traveling salesmen into the State of Kansas and took orders for goods subject to the approval of the company at their office at St. Louis, to be shipped to Kansas and payments therefor were remitted by the purchasers to the company at the St. Louis office. This company went out of

business in 1901 and has not carried on any business anywhere since then, and it is claimed by defendants to have merged into the United States Steel Corporation, but this claim is not supported by competent evidence.

6. Aultman, Miller & Company were declared a bankrupt in 1903 by the United States District Court for the Northern District of Ohio, and then ceased to do business, and all its effects of every kind, including the judgment sought to be enforced in this action, were sold under said proceedings to the Aultman & Miller Buckeye Co. No revivor of said action or substitution of the Aultman & Miller Buckeye Co., was made until May, 1908, when an order of substitution was made without the consent of the defendants herein.

To which said finding No. 6 the Aultman & Miller Buckeye Co. duly excepted.

7. The Galveston Rope & Twine Co. was a corporation, duly incorporated under the laws of the state of Texas. On August 6th
171 1895, the judgment in its favor which is sought to be enforced in this action, was sold to A. D. Homer, and afterwards, in 1895, it was sold by A. D. Homer to the Galveston Rope Co. At the time of the commencement of this action, the Galveston Rope & Twine Co. had no interest in the judgment rendered in its favor against C. C. Vickers. The Galveston Rope Company has never been a party to this action. The Galveston Rope & Twine Co. failed to pay the franchise tax required by the laws of the State of Texas for the year 1896, and under the laws of said state, such failure worked a forfeiture of its charter.

To which said finding No. 7, the Galveston Rope Co. duly excepted at the time.

8. The debts for which the judgment mentioned in the petition were rendered, were all contracted by the firm of W. L. Vickers & Co., at Wichita Falls, Texas, which firm commenced business in 1891. All the capital of the firm was contributed by C. C. Vickers, and the business was managed by his nephew, W. L. Vickers. They started in business, intending to use a capital of about $8000.00, but from time to time W. L. Vickers drew *of* C. C. Vickers for additional funds until the latter had contributed about $14,000.00.

That all the judgments sought to be enforced in this action were rendered in the year 1895, and the suits of all the plaintiffs were commenced long before the passage of Chapter 125 of the Session Laws of 1901 of the State of Kansas. It was admitted upon the trial of this case by all the parties, that the plaintiffs obtained judgments for the amounts and of the dates as alleged in the petition. It is further admitted that the defendant C. C. Vickers and Mary P. Vickers conveyed the lands mentioned in the petition to Perry B. Maxson in a deed dated the 30th day of June, 1894, and acknowledged by Mrs. Vickers on that date at Council Grove, Kansas, and signed and acknowledged by C. C. Vickers at Wichita Falls, Texas, on the 5th day of July, 1894, and there was no controversy as to judgments and amounts in each case.

9. In 1875 the defendant C. C. Vickers settled upon the N. E. ¼ of Sec. 36, in Twp. 17 South of Range 9 East of the 6th P. M., in

Morris County, Kansas, and he, together with his family continued to reside thereon until about the first of March, 1893, at which time he removed, with his family, to the town of Dunlap, in said County.

10. Prior to leaving the premises above the defendant C. C. Vickers made a written lease of his entire ranch, including the tract above described, to Milton Stubbs, for the term of three years from the first day of March, 1893.

11. At the time of his removal from the ranch in 1893, the family of the defendant C. C. Vickers consisted of his wife, Mary P. Vickers, and three children. Afterwards another child was born to them, and during all the time since the said C. C. Vickers has remained a married man, and the head of a family.

12. One of the principal reasons that induced the defendant C. C. Vickers and Mary P. Vickers to remove with their family to Dunlap, was that their children might secure a better schooling in the latter place.

13. After their removal from said ranch and from the part thereof which had been occupied by them as their home, the defendant C. C. Vickers continued to leave a part of his farming machinery and stock upon said ranch, and this condition of affairs continued until the conveyance was made to Maxson hereinafter referred to.

14. In April, 1893, the defendant C. C. Vickers became engaged in the livery business, which occupation he followed for a short time, and afterwards in July 1893, he received the appointment as postmaster of the Dunlap postoffice, and entered upon the discharge of the duties of that office.

15. When the defendant C. C. Vickers and Mary P. Vickers removed from the ranch, as above recited, they moved into rented property in Dunlap, and have never since owned any other residence property than that which they left upon the farm.

172 16. At the time of leaving the farm, the defendant C. C. Vickers and Mary P. Vickers did not determine to abandon their old home permanently, but expected to return there some time.

To which said finding No. 16 the plaintiffs duly excepted.

17. After his appointment as postmaster, the defendant C. C. Vickers abandoned any idea which he may have previously entertained of returning to his farm until after the expiration of his term of office, but he never did prior to the execution of the conveyance to P. B. Maxson hereinafter referred to, abandon his intention to return to the farm.

To which said finding No. 17 the said plaintiffs and the defendant both duly excepted.

18. This case had been tried twice in the District Court, and twice heard upon proceedings in error in the Supreme Court, and had been pending for ten years before any claims were made by any one in this action that any part of the premises in controversy was a homestead at the time of the conveyance to Maxson hereinafter recited.

19. The business at Wichita Falls hereinbefore referred to, never

paid any dividends, but as before stated, W. L. Vickers kept calling upon C. C. Vickers from time to time for additional funds.

20. Before his removal to Dunlap, C. C. Vickers became the owner of a thousand dollars' worth of paid-up stock in the Farmers' Bank of Dunlap, and became the president of the bank, in about the year 1884, and has remained the president of the bank ever since.

21. In 1893 the defendant C. C. Vickers by reason of the drafts upon him from the Wichita Falls concern, was owing an over-draft to the Farmers' Bank of Dunlap, in the sum of about $2000.00. The bank kept pressing him to pay this, and he, from time to time, did make small payments, reducing the amount of the overdraft. At the time he went to Wichita Falls in May 1894, the amount of this overdraft was $1147.15, and he owed the bank in addition to the amount of the overdraft, a note for $1000.00.

22. On or about March 1, 1894, the defendant C. C. Vickers shipped all his cattle consisting of 150 head of heifers to Kansas City, and sold them. He realized from this sale about $1,800.00. After this and before the 7th of May, 1894, he received $280.00 for hogs, and $50.00 for horses sold by him. In April 1894 he borrowed $3000.00, and gave a mortgage on his entire ranch to secure it. From the moneys received from these various sources, he paid his personal debts as follows: $1200.00 in payment of a note to the Farmers' Bank of Dunlap, $170.00 on the Smith note, $1300.00 to Barse & Co., of Kansas City, $800.00 to the First National Bank, $360.00 to Milton Stubbs, $105.00 to the Dunlap Bank, and, in addition to these individual debts, he paid $1000.00 on the indebtedness of W. L. Vickers & Co. to the Simmons Hardware Co.

23. About May 7th, 1894, C. C. Vickers went to Wichita Falls, hoping to be able to raise some money there to meet the overdraft at the Farmers' Bank of Dunlap (which the bank was insisting very urgently should be paid at once, as the Bank Examiner was liable to call at any time and make trouble, if it were not adjusted), and also for the purpose of closing out his business in Texas, if possible. At the time C. C. Vickers went to Wichita Falls, and about the 7th day of May, 1894, he had no idea but that he was perfectly solvent, and he believed that the store at Wichita Falls would not only pay all the debts of the firm of W. L. Vickers & Co., but that he could raise money enough from his business there to pay the amount of his overdraft to the bank at home.

24. Some time about the middle of June, 1894, the defendant C. C. Vickers discovered that the firm of W. L. Vickers & Co., was not able to meet their claims as they matured, and that if crowded, the firm would be insolvent.

25. On the 26th of June, 1894, W. L. Vickers & Co., sold all their stock of merchandise to the Simmons Hardware Co. and the
173 Panhandle National Bank, their two largest creditors, for about $7000.00, and at the rate of 66⅔ per cent of cost and carriage. This did not quite pay the indebtedness to these two concerns, and the proceeds from the sale of a horse belonging to the firm was used in settlement of the balance.

26. At the time of this sale, the firm of W. L. Vickers & Co. owed

their other creditors about $11,000.00 and had assets of the face value of $17,000.00, consisting principally of notes, accounts and judgments. On the 27th day of June 1894 the firm of W. L. Vickers & Co. assigned all their remaining assets, including these notes, accounts and judgments, to W. M. McGregor, who was at that time cashier of the Panhandle National Bank at Wichita Falls, Texas, giving him power to collect and distribute these assets to the creditors of the firm, pro rata.

27. After the sale and assignment became known, the creditors of W. L. Vickers & Co. commenced to gather at Wichita Falls, and their representatives called upon C. C. Vickers and told him that, in their judgment, the assets of the firm were not sufficient to pay the indebtedness. At this time C. C. Vickers told his creditors that if the assets of the firm of W. L. Vickers & Co. were not sufficient to pay the indebtedness of the firm, that he was amply able personally to pay these debts, and that he would do so, but that he desired that the assets of the firm should first be exhausted if necessary. He also told them that if they would hold their claims until the farmers could realize upon the wheat crop then growing, that the firm could collect these notes and accounts and judgments due it, and would, in his judgment, have enough to pay all claims.

28. After the assignment to W. M. McGregor, at the suggestion of some of the creditors, Frank Dorsey, who was at that time the cashier of the —— Bank of Wichita Falls, was substituted as trustee instead of McGregor. The creditors agreed not to press their claims for immediate settlement, but it does not appear that they agreed to the assignment.

29. After C. C. Vickers arrived in Wichita Falls in May, 1894, he communicated by letter from time to time with his wife, and before the 30th day of June, 1894, she knew that there was little prospect that her husband would succeed in raising any money there and that his creditors there were pressing him and that his financial situation was becoming desperate.

30. Within four days from the time that her husband had disposed of his store at Wichita Falls, Mrs. Vickers made arrangements to sell the entire Vickers ranch and the two lots in Dunlap, being all the real estate owned by her husband, to P. B. Maxson, her father, for the agreed price of $8,500.00 to be paid for as follows, $1000.00 to be paid on delivery of the deeds, and the balance to be paid by two notes of $2250.00 each payable respectively in six and twelve months from date and by the purchaser assuming the $3,000.00 mortgage on the premises. This arrangement was made subject to the approval of C. C. Vickers. The papers were all drawn up and the two notes for $2250.00 and one for $1000.00 due in ten days in lieu of that much cash and which $1000.00 note it was understood would be taken up as soon as the deeds were delivered, were deposited in the Farmers' Bank of Dunlap to be delivered to C. C. Vickers in case he accepted the proposition, and deeds were at once forwarded to Vickers for his signature.

31. Under this arrangement it was agreed between Mrs. Vickers and the Farmers Bank of Dunlap, that in case her husband ap-

8. That a reasonable time should be allowed the several foreign corporations who are plaintiffs in this suit and who have been doing business in this state, to comply with the laws of this state relating to foreign corporations doing business in this state, and an order should be made that in the event of their failure to comply with such laws within the time specified, that this action be dismissed so far as they are concerned.

And thereupon the plaintiffs, The Buck Stove & Range Co., The Samuel Cupples Woodenware Co., The St. Louis Refrigerator & Wooden Gutter Co., and the St. Louis Glass & Queensware Co., file their joint motion for a judgment and decree in their favor, upon findings of the court, and The Galveston Rope Co., and The Aultman & Miller Buckeye Co. also filed their motion for a judgment and decree in their favor, on the findings.

And thereupon, all the plaintiffs, except the Consolidated Steel & Wire Co., filed motions for a new trial on the grounds stated in said motions, and the defendants filed their motions for a new trial in the case of the Consolidated Steel & Wire Co., et al., vs. C. C. Vickers, et al.

And thereupon the Court granted the Buck Stove & Range Co., The Samuel Cupples Woodenware Co., The St. Louis Refrigerator & Wooden Gutter Co., and The St. Louis Glass & Queensware Co., until the 27th day of August, 1907, inclusive, to present evidence to this court that they have complied with the laws relating to foreign corporations doing business in the State of Kansas.

Thereupon this cause, and all matters pertaining thereto, is continued until the next regular term of this Court, for disposition.

R. R. REES, *Judge*.

Filed March 26, 1907.

* * * * * * *

177 In the District Court of Saline County, Kansas.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Motion.

Come now the plaintiffs, The Buck Stove & Range Co., Samuel Cupples Woodenware Co., and The St. Louis Refrigerator & Wooden Gutter Co., and The St. Louis Glass & Queensware Co. and each of them for itself, ask for judgment and a decree in its favor, decreeing the sale of the lands described in their petition to satisfy their respective claims herein, for the reason that the conclusion of law No. 1 is contrary to the Fourteenth Amendment to the Constitution of the United States, in that the action of this court abridges

the rights and privileges of these plaintiffs and deprives them of their property without due process of law, and denies to these plaintiffs the equal protection of the laws.

2. That Chapter 125 of the Session Laws of the State of Kansas for 1901 does not apply to actions commenced before its passage, and the Court seeks to make it retroactive so as to deny these plaintiffs the right to maintain their actions on claims and judgments that were rendered before its passage.

3. That the conclusion of Law No. 1, barring the plaintiffs, The Buck Stove & Range Company, Samuel Cupples Woodenware Co., and The St. Louis Refrigerator & Wooden Gutter Company, from maintaining this action until they comply with Chapter 125 of the Session Laws of Kansas of 1901, is contrary to and in violation of the laws of Congress regulating the commerce between the states and foreign nations.

4. That conclusion of Law No. 1, barring the plaintiffs, The Buck Stove & Range Co., Samuel Cupples Wooden Ware Co., and the St. Louis Refrigerator & Wooden Gutter Co., from maintaining this action until they comply with Chapter 125 of the Session Laws of 1901 of the State of Kansas, is contrary to and in violation of Section 12 of Article 1 of the Constitution of the United States, in that it impairs the obligation of the contracts, by barring these plaintiffs from any remedy to enforce said contracts.

5. Because Chapter 125 of the Session Laws of 1901 of the State of Kansas, does not apply to these suits, or to the plaintiffs in maintaining said suits, because these suits were commenced, and the rights to enforce their rights with respect to the subject matter of the suits, accrued long before the passage of said Chapter 125, and if said Chapter 125 applies to these plaintiffs' rights to maintain these suits, then said Chapter 125 is contrary to and in violation of Section 12 of Article 1 of the Constitution of the United States, in that it impairs the obligation of contracts.

NICHOLSON & PIRTLE.
Attorneys for Plaintiffs.

(Endorsed:) Filed Mar. 26, 1907. Aug. V. Anderson, Clerk District Court. Alex. Hederstedt, Dep.

178–183 In the District Court of Saline County, Kansas.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Come now the Altman & Miller Buckeye Company and the Galveston Rope Company, each for itself, and ask the court for judgment in its favor on the findings of fact, for the reason that upon said

findings of fact they are entitled to said judgment, because the record shows that they were the owners in good faith of the judgment of the Altman & Miller Company and the Galveston Rope & Twine Company, respectively, as per the stipulation in the record.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

(Endorsed:) Filed March 26, 1907. Aug. V. Anderson, Clerk District Court. Alex. Heslerstedt.

* * * * * * *

184–198 In the District Court of Saline County, Kansas.

THE BUCK STOVE & RANGE CO. et als., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

Come now the plaintiffs, The Buck Stove & Range Co., The Samuel Cupples Wooden Ware Co., The St. Louis Refrigerator & Wooden Gutter Co., and The St. Louis Glass & Queensware Co., and respectfully decline to comply with the order of the Court, requiring them to present evidence at this time that they have complied with the laws of the State of Kansas, in relation to foreign corporations doing business in said State, showing that they have procured a license to do business in the State of Kansas, as foreign corporations, for the following reasons:

First. The evidence on the trial of this case shows that these plaintiffs were at all times mentioned engaged exclusively in interstate commerce, and the court has no right or power, under the laws of Congress and the Constitution of the United States, to impose any such conditions upon these plaintiffs, or any of them, in order to obtain their just rights in this cause against the defendants and the lands in controversy.

Second. The application of the law under which the order of the court is made to the rights of the plaintiffs in this case, is contrary to and in violation of the Constitution and the Laws of the United States relative to interstate commerce, and these plaintiffs hereby respectfully protest against the dismissal of the suits of these plaintiffs because of their refusal to comply with Chapter 125 of the Session Laws of 1901 of the State of Kansas.

Third. Because the rights of these plaintiffs to maintain these suits, as the record shows, accrued long before the passage of Chapter 125, aforesaid, and said chapter does not apply to the controversy between the plaintiffs and the defendants herein.

Fourth. Because the claims on which these suits are founded, as the record shows, originated in interstate commerce between W. L. Vickers & Co., residing in the State of Texas, and citizens of other

states than Kansas, and if the terms of said Chapter 125 of the Session Laws of 1901, are intended to apply to the subject matter of these suits, said Chapter 125 is void, as contravening the Federal Constitution in its interstate commerce clause.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

(Endorsed:) No. 7537. Filed Aug. 27, 1907. Aug. V. Anderson, Clerk District Court.

The defendants in support of their motion for a new trial, and in support of their suggestion to the Court that the Consolidated Steel & Wire Company were a defunct concern, submitted the following evidence, over the objection of said plaintiff, Consolidated Steel & Wire Company:

* * * * * * *

169 In the District Court of Saline County, Kansas.

THE BUCK STOVE & RANGE CO. et al., Plaintiffs.
vs.
C. C. VICKERS et al., Defendants.

THE CONSOLIDATED STEEL & WIRE CO. et al., Plaintiffs.
vs.
C. C. VICKERS et al., Defendants.

Journal Entry.

NOW, on this 29th day of November, A. D. 1907, these causes came on for judgment on the findings made and rendered herein by the Court on the 26th day of March, 1907; and thereupon came the defendants and suggested to the Court that the plaintiff, The Consolidated Steel & Wire Co. had ceased to exist, and the corporation went out of existence on the 23d of November, 1899, by resolutions duly adopted in the manner provided by the laws of the State of Illinois, which was the State in which the said corporation was incorporated. And thereupon, the Court finds that since the findings of fact were rendered in this case, it has been suggested to the court and shown by legal proofs duly made herein, that the Consolidated Steel & Wire Co. has ceased to exist, and that said company is a defunct concern, to which finding the said plaintiff, The Consolidated Steel & Wire Company duly excepts.

And thereupon came said defendants and moved the court for a further finding of fact as to the separate values of the different tracts of land in controversy herein, and the court being fully advised in the premises doth overrule and deny said request, to which ruling the defendants and each of them duly excepted.

And thereupon came the said plaintiffs, The Buck Stove & Range Co., The Samuel Cupples Wooden Ware Co., The St. Louis Refrigerator & Wooden Gutter Co., and The St. Louis Glass & Queensware Co., and in open court decline to comply with the order of the Court

requiring them to produce evidence to show that they have complied with the laws of the State of Kansas in relation to foreign corporations doing business in this state, and showing that they have procured a license to do business in the State of Kansas as a foreign corporation, for the reasons stated in their written declination filed herein, and no evidence was introduced in said case showing that said corporations or either of them had complied with the laws of the State of Kansas relating to foreign corporations doing business in this state.

It is therefore considered, ordered and adjudged by the Court that these cases The Buck Stove & Range Co., et al., vs. C. C. Vickers, et al., The Consolidated Steel & Wire Co., et al., vs. C. C. Vickers, et al., which have been heretofore consolidated for trial and judgment, be and the same are dismissed, because they and each of them refused to comply with the Laws of Kansas relating to foreign corporations, to which order the plaintiffs and each of them duly excepted, and that said action be abated as to the Consolidated Steel & Wire Co., the Altman, Miller & Co., and The Galveston Rope & Twine Co., to which order the plaintiffs, and each of them excepted.

It is further ordered and adjudged by the court that the defendants, C. C. Vickers, Mary P. Vickers and P. B. Maxson, have and recover of and from the plaintiffs, The Buck Stove & Range Co., The Samuel Cupples Wooden Ware Co., The St. Louis Refrigerator & Wooden Gutter Co., and the St. Louis Glass & Queensware Co., their costs herein expended, taxed at $—, and that the plaintiffs above named pay the costs of this action, taxed at $—. To which order and judgment the said plaintiffs and each of them duly excepted.

200–203 And thereupon came on to be further heard the motion of the plaintiffs herein for a new trial of said cause, which was duly argued by counsel, and the court, after hearing said argument and being fully advised in the premises, doth deny said motion, to which ruling the said plaintiffs duly excepted.

And thereupon, upon application of the plaintiffs and each of them in both of these actions, made in open court in the presence of the attorney for the defendants, and by and with the consent of the attorney for the defendants, the plaintiffs are given 90 days from this date to prepare and serve a case made for the Supreme Court, and the defendants are given 30 days thereafter in which to suggest amendments thereto, the case to be settled upon five days notice by either party.

Approved.

R. R. REES, *Judge.*

(Endorsed:) Filed Nov. 29, 1907. Aug. V. Anderson, Clerk District Court. By W. S. Larrar, Dep.

* * * * * * *

204-206 In the District Court in and for Saline County, State of Kansas.

No. 4209.

BUCK STOVE & RANGE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

and

No. 4160.

CONSOLIDATED STEEL & WIRE COMPANY et al., Plaintiffs,
vs.
C. C. VICKERS et al., Defendants.

I, the undersigned, Judge of the District Court in and for Saline County, State of Kansas, hereby certify that the foregoing was presented to me as a case made in the actions above entitled, and both parties appeared by their attorneys, and it appearing that said case made has been duly served upon the defendants, as heretofore directed, and it further appearing that the defendants have no amendments to suggest to said case made, but consents that the same may be settled by me as it now is. I now settle and sign the same as a true and correct case made and direct that it be attested and filed by the Clerk of said Court.

Witness my hand at Salina, in Saline County, Kansas, this 24th day of March, A. D. 1908.

R. R. REES,
District Judge.

Attest:
[SEAL.] AUG. V. ANDERSON,
District Clerk.

* * * * * * *

207 Be it further remembered, that afterwards on the 10th day of April, 1909, the same being one of the regular judicial days of the January, 1909, term of the supreme court of the state of Kansas, before the said court in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record at page 410 of Journal "MM" of said court in words and figures, to-wit:

208 In the Supreme Court of the State of Kansas.

Saturday April 10th, 1909.

Journal Entry of Judgment.

No. 15964.

BUCK STOVE & RANGE CO. et al., Pl'ffs in Error.
vs.
C. C. VICKERS et al., Def'ts in Error.

This cause comes on for decision; and thereupon it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiffs in error pay the costs of this case in this court taxed at $—— and hereof let execution issue.

209 Be it further remembered, that on the same day to-wit the 10th day of April, 1909, there was filed in the office of the clerk of the supreme court of the state of Kansas, the syllabus and opinion of the court in the above entitled cause, which syllabus and opinion are in words and figures as follows, to-wit:

210 No. 15,964.

Error from Saline County.

Affirmed.

BUCK STOVE & RANGE COMPANY et al.
v.
C. C. VICKERS et al.

and

CONSOLIDATED STEEL & WIRE COMPANY et al.
v.
C. C. VICKERS et al.

Syllabus by the Court.

BENSON, *J.*:

1. The decision upon the last review of this case (Vickers v. Buck, 70 Kan. 584) that the plaintiff corporations should be allowed a reasonable time in which to comply with the statute relating to foreign corporations doing business in this state is the law in this case.

2. A corporation which had been dissolved and was non-existent for several years before the trial could not maintain the action; it had no successor, and its action was properly abated.

3. A corporation named as a plaintiff in the action has assigned its entire cause of action to another corporation before the suit was

commenced. The assignee made its first appearance in the action ten years after the assignment had been made and moved for substitution without any claim of mistake in commencing the suit in the wrong name. In the meantime the corporation in whose name the suit was instituted had been dissolved and ceased to exist. *Held*, that there was no error in denying the motion and abating the action.

4. Another one of the plaintiffs was a foreign corporation doing business in this state without having complied with our statutes, and having no right to maintain a suit in the courts of this state. While this action was pending this corporation was adjudged a bankrupt and its cause of action was assigned by the trustee to another foreign corporation which appeared in the action more than a year afterwards and asked to be substituted in place of the bankrupt plaintiff. *Held*, that the assignee could acquire no better rights than the plaintiff had, and as the plaintiff had no right to maintain the action, it should be dismissed.

211 All the justices concurring, except Graves, J., who did not sit.

Attest:

[SEAL.]

D. A. VALENTINE,
Clerk Supreme Court.

The opinion of the court was delivered by

BENSON, *J.*:

These actions were commenced to set aside a conveyance on the ground of fraud. The proceedings upon three previous trials were considered in Vickers v. Buck, 60 Kan., 598; 65 Kan., 97; and 70 Kan., 584.

All the plaintiffs are foreign corporations and judgment creditors of C. C. Vickers.

The court found that the conveyance of all the lands, except a homestead, was fraudulent, but refused to give judgment for any of the plaintiffs for reasons now to be considered.

The defendants pleaded that the plaintiffs were doing business in this state without legal authority because they had not complied with the statutory requirements concerning foreign corporations, and that they had no legal capacity to maintain a suit in the courts of this state. (Laws 1898, chap. 10, and Laws 1901, chap. 125.) They also pleaded a homestead exemption on one quarter section of the lands in question. The court found upon the first of these issues as follows:

"The Buck Stove & Range Co., Samuel Cupples Woodenware Company, The St. Louis Refrigerator & Wooden Gutter Company, The St. Louis Glass & Queensware Company, have each of them, ever since 1901, been sending traveling salesmen into this state, who took orders from citizens of Kansas dealing in their products, and sent them to their respective houses at St. Louis. If the orders were approved at headquarters, the goods were shipped to the customers in Kansas, and were paid for by them by remitting direct to the sellers at St. Louis."

and concluded that the corporations named in this finding had no right to maintain the action until they complied with the statutes relating to foreign corporations doing business in this state; that they should have a reasonable time to do so; allowed them five months for that purpose, and continued the cause until the next term without entering judgment on the findings. At the expiration of this period the corporations which were given this opportunity filed their written statement respectfully declining to so comply with the laws of this state, and protesting against the dismissal
212 of their suits for their failure to do so, giving as their reasons that they were engaged exclusively in interstate commerce; that the court had no power to impose such conditions upon them; that such conditions were in violation of the constitution and laws of the United States relating to interstate commerce; that their rights to maintain the suits originated in interstate commerce between Vickers residing in Texas and citizens of states other than Kansas, and before the passage of these statutes, and that chapter 125 of the laws of 1901, was void as contravening the commerce clause of the federal constitution. They also moved for judgment on the findings upon substantially the same ground. Upon consideration of this declination and motion the court, when the case was called for final judgment, dismissed the action as to the corporations named, at their costs.

The court found that the Consolidated Steel & Wire Company had formerly transacted business in the same manner as the other corporations, but that it went out of business in 1901, and had not carried on any business anywhere since then, and on the hearing of motions for new trial and for judgment, the defendant suggested that this corporation had been dissolved in November, 1899; the court upon competent evidence so found, and upon the further finding then made: "That since the findings of fact were rendered in this case, it has been suggested to the court and shown by legal proofs duly made herein, that the Consolidated Steel & Wire Co. has ceased to exist, and that said company is a defunct concern," ordered that the action be abated as to that party.

The court found that another plaintiff, the Galveston Rope & Twine Co. had been dissolved and its charter forfeited in the year 1896, and that previous to the forfeiture and before this action was commenced it had sold and assigned the judgment pleaded in its name to one Homer, who had assigned it to the Galveston Rope Co. As a conclusion of law the court held that the Galveston Rope & Twine Co. could not maintain the suit. A motion by the Galveston Rope Co. to be substituted in the action was filed August 3, 1906. It appears that the motion was considered at the trial when the findings were made, and in the judgment the action was abated as to the Galveston Rope & Twine Co.

213 Aultman, Miller & Company, another plaintiff, was adjudicated a bankrupt in proceedings under the federal bankruptcy act, on April 28, 1903, and in July following all its assets including the judgment set out in the petition were assigned to the Aultman & Miller Buckeye Company, a corporation organized under

the laws of Ohio. The latter company filed its petition for substitution in this action, May 23, 1906, to which the defendants answered alleging that this corporation was also doing business in Kansas without authority, and was without capacity to maintain the suit, also pleading the disability of Aultman, Miller & Company by reason of bankruptcy and that there had been no revivor or substitution for more than one year, after the adjudication and objecting thereto. The petition for substitution was granted subject to the right of the defendant to contest the right of the petitioner to maintain the action. At the trial the action was held to be abated as to Aultman, Miller & Co., by reason of the adjudication in bankruptcy.

No complaint is made of the findings of fact except in respect to the homestead.

The case was made, signed and filed in the name of the original plaintiffs. In the petition in error the Galveston Rope Company, appears as successor to the Galveston Rope & Twine Co., and the Aultman & Miller Buckeye Co. as successor to the Aultman, Miller & Co. The corporations whose names were thus dropped do not otherwise appear in this court, and the corporations appearing in this court as their successors did not join in making the case for review here. For these reasons the defendants move to dismiss these proceedings but in the view we take of the case it will not be necessary to decide this motion.

The contention of the plaintiffs, who were required to comply with the statutes relating to foreign corporations as a condition precedent to the entry of judgment in their favor, that they were not subject to the provisions of such statutes because they were engaged in interstate commerce was decided against that claim in Vickers v. Buck, 70 Kan. 584. That decision is the law in the case. (Railway Co., v. Stone, — Kan. —, just decided.)

The abatement of the action as to the Consolidated Steel & Wire Co. is complained of. Since this corporation had been dissolved in the year 1899—a fact which is not disputed—it could not
214 maintain the action nor enforce a judgment. (McRae v. Piano Co., 69 Kan. 457.) The defunct corporation could not be heard for its voice was stilled in death—and it had no successor so far as the record discloses.

The Galveston Rope Co. which succeeded to the rights of the Galveston Rope & Twine Co. before this suit was brought, was not a party to the suit, and the last named corporation never had any interest in this action although commenced in its name. If it should be claimed that upon a showing of mistake in bringing the action in the wrong name, an amendment or substitution would have been allowed, no suggestion of mistake was made; and the motion for substitution was not made until 1906, more than ten years after the suit was brought. A suit then in the name of the real party in interest would have been twice barred by limitation. To say nothing of any other ground the denial of the motion after so great a lapse of time, was within the discretion of the court, and will not be disturbed.

The court refused the petition of the Aultman & Miller Buckeye

Co. as the successor in interest of the Aultman & Miller Co. upon the ground that more than one year having elapsed after bankruptcy a revivor could not be allowed except by consent. (Gen. Stats. 1901, sec. 4883.)

In Cunkle v. Interstate Rld. Co., 54 Kan. 194, following K. O. & T. Rly. Co. v. Smith, 40 Kan. 192, it was held that where several railroad companies had been consolidated under a new name, the old companies ceased to exist, and no motion having been made to substitute the successor or to revive the proceedings in its name until more than one year after the consolidation, the old companies had become defunct and a revivor could not be allowed against one of them without the consent of the new company. The statute construed and applied in these cases is section 10 of the code of civil procedure (Gen. Stat. 1901, sec. 4168) which provides:

"* * * In case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action."

215 The question here is whether bankruptcy is a disability as that term is used in the statute, or whether it should be considered as another transfer of interest within the meaning of the last sentence of the section quoted.

The judgment held by the bankrupt company against Vickers was such property as passed to the trustee, and the trustee might, with the approval of the bankruptcy court have been permitted to prosecute in his own name the suit pending thereon. (Bankruptcy Act, — Stat. at Large, sec. 1540.) This statute is permissive. The trustee is not bound to prosecute actions that were commenced by the bankrupt unless ordered by the court in which he is appointed. It has been held that the trustee may in such a case intervene; if he does not, the action does not abate, but may be continued by the bankrupt in his own name. The failure of the trustee to act does not release the defendant in such an action. His right to have the recovery paid to the proper party may be secured by subsequent steps in the action. (Griffin v. Mutual Life Ins. Co., 119 Ga. 664; Mayhew v. Pentecost, 129 Mass. 332.)

This question was considered by the federal supreme court in an action involving similar provisions of the former bankruptcy act, and Chief Justice Waite in the opinion said:

"By sect. 5047, Rev. Stat., the assignee may prosecute or defend suits pending in the name of the bankrupt at the time of the bankruptcy, but there is nothing which renders it necessary for him to make himself a party on the record to do what is thus allowed. * * * The true rule is stated in Eyster v. Gaff, 91 U. S. 521; Burbank v. Bigelow, 92 id. 179; Norton v. Switzer, 93 id. 355; Jerome v. M'Carter, 94 id. 734; M'Henry v. La Societe Francaise &c., 95 id. 58; and Davis v. Friedlander, 101 id. 570. These cases, although the bankrupt happened to be a defendant, establish the doctrine that under the late bankrupt law the validity of a pending suit, or of the decree

or judgment therein, was not affected by the intervening bankruptcy of one of the parties; that the assignee might or might not be made a party; and whether he was so or not, he was equally bound with any other party acquiring an interest *pendente lite*. It is no defence to the debt that the creditor has become a bankrupt; and if an assignee, after notice, permits a pending suit to proceed in the name of the bankrupt for its recovery, he is bound by any
216 judgment that may be rendered." (Thatcher v. Rockwell, 105 U. S. 467, 469.)

See also 1 Remington on Bankruptcy pp. 1011-15.

It does not follow however that if the court erred in holding that the Aultman Miller & Co. was defunct that such error is fatal to the judgment. Adopting the argument of the plaintiffs that the bankruptcy, and assignment by the trustee to the Aultman & Miller Buckeye Co. should be treated as mere transfer of interest, and that the action should have been allowed to proceed to judgment in the name of the old company for the use of the new one, and treating the proceedings as having been so conducted, we must necessarily hold that the new company acquired no better rights in the litigation than its predecessor. From the stipulation filed it appears that Aultman, Miller & Co. was doing business in Kansas without complying with our statutes relating to foreign corporations precisely as the other companies were doing. It is true that the other companies were given an opportunity to so comply, but the successor of this company instead of asking for the same privilege, or intimating in any manner its wish to be included in the leave given to the others, moved for immediate judgment and then joined in the petition in error with the other corporations which had expressly declined to accept the privileges so offered and unites in the arguments made in this court that they could not legally be required to do so. Evidently it does not desire to comply with the condition offered.

The question relating to the homestead is not very material, as none of the plaintiffs can recover. In any event it was a question of fact, and the evidence being conflicting we cannot disturb the finding. (Martin v. Hoffman, 77 Kan. 185.) The facts found support the conclusion reached. (Shattuck v. Weaver, — Kan. —, (Just decided.)

We find no error in the proceedings affecting the substantial rights of any party.

The judgment is affirmed.

Johnson, C. J., Burch, J., Mason, J., Smith, J., Porter, J., concurring.

Graves, J., not sitting.

A true copy. Attest:—

[SEAL.] D. A. VALENTINE,
Clerk Supreme Court.

217 *Authentication of Record.*

SUPREME COURT,
State of Kansas, ss:

I, D. A. Valentine, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Buck Stove & Range Company, et al., vs. C. C. Vickers, et al., and Consolidated Steel & Wire Company, et al., vs. C. C. Vickers, et al., No. 15,964, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Topeka, Kansas, this August 23rd, 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

218 Here follows, the petition for the writ of error and assignments of error, the writ of error, a copy of the supersedeas bond, the citation and waiver of service thereof.

219 In the Supreme Court of the State of Kansas.

No. 15964.

BUCK STOVE & RANGE COMPANY, a Corporation; SAMUEL CUPPLES Woodenware Company, a Corporation; Aultman & Miller Buckeye Company, a Corporation, Successor in Interest to Aultman, Miller & Company, a Corporation; Consolidated Steel & Wire Company, a Corporation; St. Louis Refrigerator & Wooden Gutter Co., a Corporation; St. Louis Glass & Queensware Company, a Corporation, and Galveston Rope Company, a Corporation, Successor in Interest to Galveston Rope & Twine Company, a Corporation, Plaintiffs,

vs.

C. C. VICKERS, MARY P. VICKERS and P. B. MAXSON, Defendants.

Petition for Writ of Error, Assignment and Prayer.

Considering itself aggrieved by the final decision of the Supreme Court of the State of Kansas in rendering judgment against them in the above entitled case, the plaintiffs hereby pray a writ of error from the said decision and judgment of the U. S. Supreme Court, and an order fixing the amount of the supersedeas bond.

And the said Buck Stove & Range Company, a corporation, Samuel Cupples Woodenware Company, a corporation, Aultman & Miller Buckeye Company, a corporation, successor in interest to Aultman, Miller & Company, a corporation, Consolidated Steel &

Wire Company, a corporation, St. Louis Refrigerator & Wooden Gutter Company, a corporation, St. Louis Glass & Queensware Company, a corporation, and the Galveston Rope Company, a corporation, successor in interest to Galveston Rope & Twine Company, a corporation, assign the following errors in the records and proceedings of the said case.

The Supreme Court of Kansas erred in holding and deciding that the provisions of Section 10 of the Session Laws of 1898, and Chapter 125 of the Session Laws of 1901, of the State of Kansas, relating to foreign corporations, applied to these plaintiffs, and that before they could have a decree rendered in their favor on the findings of fact by the trial court, they must comply with the provisions of the aforesaid statutes. And said court erred in upholding the
220 dismissal of said suits by the trial court for the failure of these plaintiffs to comply with the order of the trial court and the provisions of said laws. The validity of the application of said statutes was denied and drawn in question by the plaintiffs, on the ground of their being repugnant to the constitution of the United States and in contravention thereof.

The said errors are more specifically set forth as follows:

The Supreme Court of Kansas erred in holding and deciding:

First. That Chapter 10 of the Session Laws of 1898, and Chapter 125 of the Session Laws of 1901, of the State of Kansas, relating to foreign corporations, applied to these plaintiffs, for the reason that these plaintiffs have at all times been engaged in interstate commerce, only, and the application of said statutes to these plaintiffs is in violation of Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, relative to the regulation of commerce among the several states.

Second. This action was commenced on June 13, 1896, and by applying the provision of said statutes passed in 1898 and 1901, the Kansas Supreme Court violated Paragraph 1 of Section 10 of Article 1 of the Constitution of the United States, relating to the impairment of obligations of contracts.

For which errors these plaintiffs pray that the said judgment of the Supreme Court of the State of Kansas, dated April 10, 1909, be reversed and the Supreme Court of Kansas be directed to command the District Court of Saline County, Kansas, on the findings of fact, to render a decree in favor of these plaintiffs, and each of them, and for costs.

M. B. NICHOLSON,
W. J. PIRTLE,
Attorneys for Plaintiffs.

STATE OF KANSAS,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by the plaintiffs to the defendants, in the sum of One thousand Dollars ($1000.00); such bond when approved to act as a supersedeas.

Dated August 5, 1909.

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

220½ [Endorsed:] In the Supreme Court of Kansas. No. 15964. Buck Stove & Range Co., a corporation, et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants. Petition for Writ of Error, Assignment and Prayer. Filed Aug. 5, 1909. D. A. Valentine, Clerk Supreme Court. Nicholson & Pirtle, Attorneys for Plaintiffs.

221 *Writ of Error.*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Buck Stove & Range Company, a corporation; Samuel Cupples Woodenware Company, a corporation; Aultman & Miller Buckeye Company, a corporation, successor in interest to Aultman, Miller & Company, a corporation; Consolidated Steel & Wire Company, a corporation; St. Louis Refrigerator & Wooden Gutter Company, a corporation; St. Louis Glass & Queensware Company, a corporation, and Galveston Rope Company, a corporation, successor in interest to Galveston Rope & Twine Company, a corporation, plaintiffs, and C. C. Vickers, Mary P. Vickers and P. B. Maxson, defendants, wherein was drawn in question and validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was against the right, privilege and exemption specially set up and claimed under certain clauses of the said Constitution; a manifest error hath happened, to the great damage of the said Buck Stove & Range Company, a corporation; Samuel Cupples Woodenware Company, a corporation; Aultman & Miller Buckeye Company, a corporation, successor in interest to Aultman, Miller & Company, a corporation; Consolidated Steel & Wire Company, a corporation; St. Louis Refrigerator & Wooden Gutter Company, a corporation; St. Louis Glass & Queensware Company, a corporation, and Galveston Rope Company, a corporation, successor in interest to Galveston Rope & Twine Company, a corporation, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

222 the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 21" day of August, in the year of our Lord one thousand nine hundred and nine.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT,
Clerk Circuit Court United States,
District of Kansas.

Allowed:

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

[Endorsed:] Buck Stove & Range Company, a corporation, et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants. Writ of error. Filed Aug. 21, 1909. D. A. Valentine, Clerk Supreme Court.

223 In the Supreme Court of the State of Kansas.

BUCK STOVE & RANGE COMPANY, a Corporation; SAMUEL CUPPLES Woodenware Company, a Corporation; Aultman & Miller Buckeye Company, a Corporation, Successor in Interest to Aultman, Miller & Company, a Corporation; Consolidated Steel & Wire Company, a Corporation; St. Louis Refrigerator & Wooden Gutter Company, a Corporation; St. Louis Glass & Queensware Company, a Corporation, and Galveston Rope Company, a Corporation, Successor in Interest to Galveston Rope & Twine Company, a Corporation, Plaintiffs in Error,

vs.

C. C. VICKERS, MARY P. VICKERS, and P. B. MAXSON, Defendants in Error.

Copy of Bond.

Know all men by these presents, That we, Buck Stove & Range Company, as principal, and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the said defendants in error, in the sum of One Thousand Dollars ($1,000.00), to be paid to the said defendants, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this 10th day of August, 1909.

Whereas, the above named plaintiffs in error seek to prosecute their writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Kansas.

Now, therefore, the condition of this obligation is such, that if the above named plaintiffs in error shall prosecute their said writ of error to effect, and answer all costs and damages that may be ad-

judged if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

THE BUCK STOVE & RANGE CO.,
By J. M. VANCLEAVE, *President.*
THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By STEPHEN A. MARTIN,
Resident Vice President.

Attest:
MARY CRAWLEY,
Resident Secretary.

[Seal of The United States Fidelity & Guaranty Company.]

Bond approved, and to operate as a supersedeas.
W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

[Endorsed:] Buck Stove & Range Company, a corporation, et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants. Copy of Bond.

224 *Copy of Resolution.*

Resolved, that Charles W. Disbrow and Stephen A. Martin be and they hereby are elected Resident Vice-Presidents of the Company, residing in the City of St. Louis, State of Missouri, and Mark Crawley and J. E. Bailey be and they hereby are elected Resident Secretaries of said Company, residing in the City and State aforesaid, and the said Resident Vice-Presidents be and either one of them is hereby authorized and empowered to sign the name of the Company as surety to, and to execute, acknowledge, justify upon and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed; and

Also to execute, seal and deliver all bonds or undertakings required under Chapter 282 of the revised statutes of the United States, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon," passed August 13th, 1894, and

Also to affix the seal of the Company to any and all of said bonds or undertakings, said seal when so affixed to be attested in every instance by either the said Mark Crawley or the said J. E. Bailey, Resident Secretaries.

I, Albert H. Buck, 3rd Ass't Secretary of The United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a full, true and correct copy of a resolution duly passed by the Board of Directors of said Company, at a regular meeting duly held on the 8th day of March, A. D. 1909, a quorum being present, as the same appears on the records of the Company, now in my possession and custody as 3rd Ass't Secretary.

Given under my hand and the seal of the Company at Baltimore, Maryland, this 13th day of May, A. D. 1909.

[Seal of the United States Fidelity & Guaranty Company.]

ALBERT H. BUCK,
3rd Ass't Secretary.

225 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. C. Vickers, Mary P. Vickers and P. B. Maxson, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Kansas, wherein the Buck Stove & Range Company, a corporation; Samuel Cupples Woodenware Company, a corporation; Aultman & Miller Buckeye Company, a corporation, successor in interest to Aultman, Miller & Company, a corporation; Consolidated Steel & Wire Company, a corporation, St. Louis Refrigerator & Wooden Gutter Company, a corporation; St. Louis Glass & Queensware Company, a corporation, and Galveston Rope Company, a corporation, successor in interest to Galveston Rope & Twine Company, a corporation, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Kansas, this 21st day of August, 1909.

[Seal Supreme Court, State of Kansas.]

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

Attest:
D. A. VALENTINE,
Clerk Supreme Court of Kansas.

TOPEKA, KANSAS, *August* —, 1909.

We, attorneys of record for the defendants in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

S. H. ALLEN,
OTIS S. ALLEN,
GEORGE S. ALLEN,
Attorneys for C. C. Vickers, Mary P. Vickers and P. B. Maxson.

[Endorsed:] Buck Stove & Range Company, a corporation, et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants. Copy of citation. For Allen & Allen. Filed Aug. 21, 1909. D. A. Valentine, Clerk Supreme Court.

226 *Certificate of Lodgment.*

SUPREME COURT,
State of Kansas, ss:

I, D. A. Valentine, clerk of the said court, do hereby certify that there was lodged with me as such clerk on August 23rd, 1909, in the matter of Buck Stove & Range Company, et al., vs. C. C. Vickers, et al., and Consolidated Steel & Wire Company, et al., vs. C. C. Vickers, et al., No. 15,961:

1. The original bond of which a copy is herein set forth.

2. Four copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Topeka, Kansas, this August 23rd, 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

227 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Kansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Kansas, in the City of Topeka, this August 23, 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

Costs of Suit.

Plaintiff's costs, $—. Paid by plaintiffs.
Defendants' costs, $—. Paid by
Costs of transcript, $—. Paid by plaintiff.

——— ———,
Clerk Supreme Court of Kansas.

228 Supreme Court of the United States.

BUCK STOVE & RANGE COMPANY et al., Plaintiffs in Error,
vs.
C. C. VICKERS et al., Defendants in Error.

Stipulation as to Printing Record.

It is stipulated and agreed by and between the counsel for the plaintiffs in error and counsel for the defendants in error, that in order to save expense in the printing of the record herein, that the following portions of the record, the same being sufficient to show the errors complained of, shall be printed, and no more, to wit:

Citation, and acceptance of service, page 225 of record.

Writ of Error, pages 221 and 222.

Clerk's return on Writ of Error, page 227.

Petition in Error in Supreme Court of Kansas, pages 5 to 8, inc.

Petition in District Court, pages 11 and 12.

Motion of defendants to dismiss suits, page 17.

Amended and supplemental answers of defendants, pages 19 to 30, inc.

Replies and amended replies to said answers, pages 31 to 41, inc.

Amended answer of P. B. Maxson, page 49.

Admissions as to dates of original suits, page 115.

Journal Entry containing Findings of fact and Conclusions of law, pages 170 to 175, inc.

Motion of plaintiffs for judgment on findings, page- 177 and 178.

Refusal of certain plaintiffs to comply with order of court, page 184.

Judgment and decree of court, pages 199 and 200.

Certificate of Judge, page 204.

Opinion of Supreme Court of Kansas, pages 210 to 216, inc.

Authentication of record, page 217.

Petition for writ of error, assignment and prayer and allowance of writ, pages 219 and 220.

It is further stipulated and agreed, that if from oversight or omission any necessary part of the record be not thus printed, that
229 the plaintiffs in error have the right to print, or may be required by defendants in error to print, any further or additional portions thereof.

MALCOLM B. NICHOLSON,
WILLIAM J. PIRTLE,
SENECA N. TAYLOR,
Attorneys for Plaintiffs in Error.
ROBERT STONE,
ALLEN & ALLEN,
STEPHEN H. ALLEN,
Attorneys for Defendants in Error.

[Endorsed:] 598/21824.

[Endorsed:] File No. 21,824. Supreme Court U. S. October Term, 1909. Term No. 598. Buck Stove & Range Co. et al., Pl'ffs in Error, vs. C. C. Vickers et al. Stipulation as to printing record. Filed October 7, 1909.

Endorsed on cover: File No. 21,824. Kansas, Supreme Court. Term No. 598. Buck Stove & Range Company, Samuel Cupples Woodenware Company, Aultman & Miller Buckeye Company et al., Plaintiffs in Error, vs. C. C. Vickers, Mary P. Vickers, and P. B. Maxson. Filed September 15th, 1909. File No. 21,824.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1909.

BUCK STOVE & RANGE COMPANY, A CORPORATION, ET AL., *Plaintiffs in Error,*

vs.

C. C. VICKERS, MARY P. VICKERS, AND P. B. MANSON, *Defendants in Error.*

No. [redacted]

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR ON MOTION OF DEFENDANTS IN ERROR TO DISMISS AND TO AFFIRM.

SENECA N. TAYLOR,
MALCOLM B. NICHOLSON,
WILLIAM J. PIRTLE,
Attorneys for Plaintiffs in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1909.

BUCK STOVE & RANGE COMPANY, A CORPORATION, ET AL.,
Plaintiffs in Error,

vs.

C. C. VICKERS, MARY P. VICKERS, AND P. B. MAXSON,
Defendants in Error.

No. 598.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR ON MOTION OF DEFENDANTS IN ERROR TO DISMISS AND TO AFFIRM.

The defendants in error have filed two motions in this court.

First. To dismiss because this court has no jurisdiction; and

Second. That if this court has jurisdiction that it is manifest that the question on which the jurisdiction de-

pends is so frivolous as not to need further argument, and because the question of law sought to be raised has been already decided by this court.

In support of these motions they give a partial history of the case, but in order that the court may fully understand the controversy we here give a succinct history of the whole matter.

The plaintiffs in error were all corporations, some organized under the laws of the State of Missouri, some under the laws of the State of Texas and some under the laws of the State of Ohio (Record p. 35).

In the year 1891, W. L. Vickers & Company, of which C. C. Vickers, one of the defendants in error, was a member, engaged in the hardware business in Wichita Falls, Texas, and while so engaged in business, said firm became indebted to the plaintiffs in error for goods sold in their respective states and shipped direct to the State of Texas to the firm of W. L. Vickers & Company (Record p. 36).

C. C. Vickers lived in Morris County, Kansas, and owned a large tract of land situated in Morris, Lyon and Chase Counties, Kansas.

In June, 1894, the firm of W. L. Vickers & Company failed at Wichita Falls, Texas, and the assets of the firm were disposed of, leaving in the neighborhood of $11,000.00 owing and due these plaintiffs in error (Record pp. 38 and 39).

On the 30th day of June, 1894 C. C. Vickers and Mary P. Vickers, his wife, transferred all the real es-

tate they owned to P. B. Maxson, the father of Mary P. Vickers (Record p. 39).

Actions were brought in the District Court of Morris County, Kansas, severally, by these plaintiffs in error, on their respective claims, and judgments obtained in the fall of 1895 against C. C. Vickers (see finding of fact No. 8, Record p. 36).

On the 13th day of June, 1896, these plaintiffs in error, in two groups, filed separate creditors' bills to set aside the transfers of the land conveyed by Vickers and his wife to Maxson, on the ground that said transfer was fraudulent and made for the purpose of hindering, delaying and defrauding the creditors of C. C. Vickers. The suits have been tried several times in the District Court of Morris County and decrees were rendered in favor of these plaintiffs in error at each trial in said court. The defendants in error appealed to the Supreme Court of Kansas, which court reversed the decree of the court below, on points other than merits of the case, and remanded the suit back to the trial court for another hearing. Finally, the defendants in error asked for and were granted a change of venue from the District Court of Morris County to that of Saline County, Kansas, where the case was again tried, and findings of fact made by the trial court in favor of these plaintiffs in error, on March 26, 1907 (Record pp. 35 to 40, inclusive), and thereupon the court gave these plaintiffs in error until August 27, 1907, in which to present evidence showing that they had procured per-

mission to do business in the State of Kansas, as foreign corporations, and that they had complied with the Kansas laws in relation to foreign corporations doing business in the state. In the pleadings and during the trials of this case the plaintiffs in error made claim that the corporation laws of Kansas did not apply to them for the reasons hereinafter set forth.

These plaintiffs in error filed their motions in the District Court on March 26, 1907, for judgment upon the findings of fact, which motions are as follows:

"*In the District Court of Saline County, Kansas. The Buck Stove & Range Co. et al., Plaintiffs, vs C. C. Vickers, et al., Defendants. The Consolidated Steel & Wire Co., et al., vs. C. C. Vickers, et al., Defendants.*

MOTION.

Come now the plaintiffs, the Buck Stove & Range Co., Samuel Cupples Wooden Ware Co., and the St. Louis Refrigerator & Wooden Gutter Co., and each of them for itself, ask for judgment and a decree in its favor, decreeing the sale of the lands described in their petition to satisfy their respective claims herein, for the reason that conclusion of law No. 1 is contrary to the Fourteenth Amendment to the Constitution of the United States, in that the action of this court abridges the rights and privileges of these plaintiffs and deprives them of their property without due process of law, and denies to these plaintiffs the equal protection of the laws.

2. That Chapter 125 of the Session Laws of the State of Kansas for 1901 does not apply to actions commenced before its passage, and the court seeks to make it retroactive so as to deny these plaintiffs the right to

maintain their actions on claims and judgments that were rendered before its passage.

3. That the conclusion of law No. 1, barring the plaintiffs, the Buck Stove & Range Company, Samuel Cupples Woodenware Co., and the St. Louis Refrigerator & Wooden Gutter Company, from maintaining this action until they comply with Chapter 125 of the Session Laws of Kansas of 1901, is contrary to, and in violation of, the laws of Congress regulating the commerce between the states and foreign nations.

4. That the conclusion of law No. 1, barring the plaintiffs, the Buck Stove & Range Co., Samuel Cupples Wooden Ware Co., and the St. Louis Refrigerator & Wooden Gutter Co., from maintaining this action until they comply with Chapter 125 of the Session Laws of 1901 of the State of Kansas, is contrary to and in violation of Section 12 of Article 1 of the Constitution of the United States, in that it impairs the obligation of the contracts, by barring these plaintiffs from any remedy to enforce said contracts.

5. Because Chapter 125 of the Session Laws of 1901 of the State of Kansas does not apply to these suits, or to the plaintiffs in maintaining said suits, because these suits were commenced, and the rights to enforce their rights with respect to the subject matter of the suits, accruing long before the passage of said Chapter 125, and if said Chapter 125 applies to these plaintiffs' rights to maintain these suits, then said Chapter 125 is contrary to and in violation of Section 12 of Article 1 of the Constitution of the United States, in that it impairs the obligation of contracts.

NICHOLSON & PIRTLE,
Attorneys for Plaintiffs.

(Endorsed): Filed Mar. 26, 1907. Aug. V. Anderson, Clerk District Court. Alex Hederstedt, Dep."

"*In the District Court of Saline County, Kansas. The Buck Stove & Range Co., et al., Plaintiffs, vs. C.*

C. Vickers, et al., Defendants. The Consolidated Steel & Wire Co., et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants.

Come now the Aultman & Miller Buckeye Company and the Galveston Rope Company, each for itself, and ask the court for judgment in its favor on the findings of fact, for the reason that upon said findings of fact they are entitled to said judgment, because the Record shows that they were the owners in good faith of the judgment of the Aultman & Miller Company and the Galveston Rope & Twine Company, respectively, as per the stipulation in the Record.

NICHOLSON & PIERCE,
Attorneys for Plaintiffs.

(Endorsed): Filed March 29, 1907. Aug. V. Anderson, Clerk District Court. Alex. Heberstelt."

(Record pp. 33 and 34.)

And on August 27, 1907, these plaintiffs in error filed their declination to comply with order of court and said laws of Kansas (see Record p. 44), which is as follows:

"*In the District Court of Saline County, Kansas. The Buck Stove & Range Co., et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants. The Consolidated Steel & Wire Co., et al., Plaintiffs, vs. C. C. Vickers, et al., Defendants.*

Come now the plaintiffs, the Buck Stove & Range Co., the Samuel Cupples Woolen Ware Co., the St. Louis Refrigerator & Wooden Gutter Co., and the St. Louis Glass & Queensware Co., and respectfully decline to comply with the order of the court, requiring them to present evidence at this time that they have complied with the laws of the State of Kansas in relation to foreign corporations doing business in said state, showing

that they have procured a license to do business in the State of Kansas, as foreign corporations, for the following reasons:

First. The evidence on the trial of this case shows that these plaintiffs were at all times mentioned engaged exclusively in interstate commerce, and the court has no right or power, under the laws of Congress and the Constitution of the United States, to impose any such conditions upon these plaintiffs, or any of them, in order to obtain their just rights in this cause against the defendants and the lands in controversy.

Second. The application of the law under which the order of the court is made to the rights of the plaintiffs in this case is contrary to and in violation of the Constitution and the laws of the United States relative to interstate commerce, and these plaintiffs hereby respectfully protest against the dismissal of the suits of these plaintiffs because of their refusal to comply with Chapter 125 of the Session Laws of 1901 of the State of Kansas.

Third. Because the rights of these plaintiffs to maintain these suits, as the Record shows accrued long before the passage of Chapter 125, aforesaid, and said Chapter does not apply to the controversy between the plaintiffs and the defendants herein.

Fourth. Because the claims on which these suits are founded, as the Record shows, originated in interstate commerce between W. L. Vickers & Co., residing in the State of Texas, and citizens of other states than Kansas, and if the terms of said Chapter 125 of the Session Laws of 1901, are intended to apply to the subject matter of these suits, said Chapter 125 is void, as contravening the Federal Constitution in its interstate commerce clause.

NICHOLSON & PIERCE,
Attorneys for Plaintiffs

(Endorsed): No. 7537. Filed Aug. 27, 1907. Aug. V. Anderson, Clerk District Court."

On November 29, 1907, the court dismissed said causes "because they and each of them refused to comply with the laws of Kansas relating to foreign corporations" (see Record pp. 45-46).

This judgment of dismissal was affirmed by the Supreme Court of Kansas (see Record pp. 48 and 49).

FIRST KANSAS CORPORATION LAW

In the closing days of the year 1898 the Special Session of the Legislature of the State of Kansas passed Chapter 10 of the Laws of said Session, which took effect on January 11, 1899. This is the first law enacted and placed on the statutes of the State of Kansas, requiring foreign or domestic corporations to pay a license fee and file annual statements with the Secretary of State, in order to do business or bring and maintain actions in the courts of Kansas, and we may say in passing that this law was enacted about two and one-half years after these suits were commenced by the plaintiffs in error in the District Court of Morris County, Kansas, and about three and one-half years after the several plaintiffs obtained their judgments against C. C. Vickers in the same court, and to enforce the collection of which this suit was brought on June 13, 1896.

The laws, as afterwards amended, which the defendants in error seek to invoke against these plaintiffs in error, were incorporated into and are now Sections 16, 17 and 42 of Chapter 23 of the Compiled Laws of 1905, which sections read as follows:

Section 16. "Persons seeking to form a private corporation under any of the laws of this state, or any corporation organized under the laws of any other state, territory, or foreign country, and seeking to do business in this state, shall make application to said board, upon blanks supplied by the Secretary of State, for permission to organize a corporation or to engage in business as a foreign corporation in this state. Such application shall set forth——

If a corporation to be organized under the laws of this state: 1st, The name desired for such corporation; 2d, The place where its principal office or place of business is to be located; 3d, The length of time for which said corporation is to exist; 4th, The full nature and character of the business in which it proposes to engage; 5th, The names and addresses of the proposed incorporators; 6th, The proposed amount of the capital stock.

If a corporation organized under the laws of another state, territory or foreign country, and seeking to do business in this state: 1st, A certified copy of its charter or articles of incorporation; 2d, The place where its principal office or place of business is to be located; 3d, The full nature and character of the business in which it proposes to engage; 4th, The names and addresses of the officers, trustees or directors and stockholders of the corporation; 5th, A detailed statement of the assets and liabilities of said corporation, and such other information as the board may require in order to determine the solvency of the corporation. Such statement shall be subscribed and sworn to by the president and secretary or by the managing officer of said corporation."

Section 17. "Each application for permission to organize a corporation or to engage in business in this state as a foreign corporation, shall be accompanied by a fee of twenty-five dollars, to be known as an application fee; and in all cases where such applications are

made by corporations organized under the laws of any other state, territory, or foreign country, and as a condition precedent to obtaining authority to transact business in this state, said corporation shall file in the office of Secretary of State its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in this state in which the cause of action arose, or in which the plaintiff may reside, by the service of process on the Secretary of State, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or chief officer of such corporation, and shall be executed by the president and secretary of the company, authenticated by the seal of the corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the said secretary and president to execute the same. Every foreign corporation now doing business in this state shall, within thirty days from the taking effect of this act, file with the Secretary of State its written consent as above specified."

Section 42. "It shall be the duty of the president and secretary or of the managing officer of each corporation for profit doing business in this state, except banking, insurance and railroad corporations annually, on or before the 1st day of August, to prepare and deliver to the Secretary of State a complete detailed statement of the condition of such corporation on the 30th day of June, next preceding. Such statement shall set forth and exhibit the following, namely: 1st. The authorized capital stock; 2d. The paid up capital stock; 3d. The par value and the market value per share of said stock; 4th. A complete and detailed statement of the assets and liabilities of the corporation; 5th. A full and complete list of the stockholders, with the post office address of each and the number of shares held and paid for by each; 6th. The names and post office addresses of the officers, trustees or directors and manager elected

for the ensuing year, together with a certificate of the time and manner in which such election was held. Such reports shall be made upon and in conformity to blanks prepared by the Secretary of State and approved by the charter board. The fee for filing such report and making a certificate that the same has been made and is on file shall be one dollar. The Secretary of State may at any time require a further or supplementary report under this section, which shall contain the same information and data as specified in the annual report herein required; and the failure of any such corporation to file the statement in this section provided for within ninety days from the time provided for filing the same, shall work the forfeiture of the charter of any corporation organized under the laws of this state, and the charter board may at any time thereafter declare the charter of such corporation forfeited, and upon the declaration of any such forfeiture it shall be the duty of the attorney general to apply to the District Court of the proper county for the appointment of a receiver to close out the business of such corporation; and such failure to file such statement by any corporation doing business in this state and not organized under the laws of this state shall work a forfeiture of its right or authority to do business in this state, and the charter board may at any time declare such forfeiture, and shall forthwith publish such declaration in the official state paper. It shall also be the duty of the president and secretary of any such corporation organized under the laws of this state, as soon as any transfer, sale or change of ownership of any such stock is made, as shown upon the books of the company, to file with the Secretary of State a statement of such change of ownership, giving the name and address of the new stockholder or stockholders, the number of shares so transferred, the par value, and the amount paid on such stock. No transfer of such stock shall be legal or binding until such statement is made as provided for in this act. The record of the Secretary of State shall be *prima facie* evidence of the stockholders

of such corporation, the number of shares held by each, and the amount paid on each share of capital stock. No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made."

THERE IS NO MISJOINDER OF PLAINTIFFS IN ERROR.

Counsel for defendants in error say in their motions that this court has no jurisdiction of the subject-matter of said cause or any question presented by the record herein. That the Consolidated Steel & Wire Company does not exist, and therefore cannot join or be joined as a plaintiff in error, and cannot present a federal or any other kind of a question for the consideration of this court.

Granting that the Consolidated Steel & Wire Company has been dissolved, we say that has no bearing upon the jurisdiction of the court, as to the other plaintiffs in error. It is apparent upon the face of the record that the plaintiffs in error joined in two groups and brought a creditors' bill for each group against the defendants in error, and after the cases came on for trial, by agreement of the parties and for convenience and for the reason that the same questions were involved in both cases, they were consolidated and have been treated after such consolidation as one suit, and all were proper parties at the time such suits were commenced, and, under the practice in Kansas and provisions of the Code of

Civil Procedure of the State, judgment may be rendered for or against one or more of several plaintiffs, and for or against one or more of several defendants. Section 5203, General Statutes of 1905, is as follows:

"Judgments may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants. It may determine the ultimate rights of the parties on either side as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment may be proper. The court may also dismiss the petition with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or proceed in the cause against the defendant or defendants served."

The Supreme Court of Kansas, in *Kansas City vs. King*, 65 Kan., 65, in construing and applying this section, says:

"A number of errors are assigned, which will be briefly noticed. When the cause was remanded for a second trial the petition was amended by striking out the averment that Nina King was the owner of the property injured. In the original petition it was alleged that James King and Nina King were the owners of the property, and, as the amendment was made after the statutory period for bringing such an action had expired, it is argued that the amendment introduced a new cause of action which was then barred. The amendment did not introduce a different cause of action, and it was, in fact, immaterial. The fact that the Kings

sued jointly does not require that there shall be a joint recovery, or none at all. The common law rule was that the several plaintiffs in an action must all recover jointly or all utterly fail, but our Code, Section 396 (Gen. Stat. 1901, Sec. 4848) (5293 Gen. Stat. 1905, above quoted), provides that 'judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants.' If no amendment had been made, and the proof had shown that James King owned the entire interest in the property and had sustained the entire loss, he would have recovered for that loss (*Hurd vs. Simpson*, 47 Kan., 372, 27 Pac., 961). The fact that Nina King, impleaded with him, had failed to establish the right of recovery, would not affect his rights to recover for the actual damages sustained by him and hence the amendment was unnecessary and immaterial and did not change the cause of action."

So we say that, so far as the Consolidated Steel & Wire Company's connection with the case is concerned, it is immaterial as to the other parties plaintiff. The Consolidated Steel & Wire Company may be dropped out entirely and still the action can be maintained by the other plaintiffs in error.

Now, as to the Altman & Miller Buckeye Company and the Galveston Rope Company. Defendants in error claim that because they were never parties to the suit that that vitiates these proceedings in error and precludes them from having any standing in this court.

Altman, Miller & Company at the time these suits were brought was a proper party to the creditors' bill filed, and when the suit was pending and before it was determined in the District Court, was adjudged a bankrupt by the District Court of the United States for the

Northern District of Ohio, and all its assets, under the order of the court, were sold to the Altman & Miller Buckeye Company, and the latter company became the owner of the judgment sought to be satisfied by the sale of the land involved in this controversy, and it is now claimed that because there was no revivor of the suit in the name of Altman & Miller Buckeye Company, that company had no right in the controversy that would be recognized by the court. The Supreme Court of Kansas, in its opinion contained in this record, says practically that if Altman, Miller & Company had a right to recover that the Altman & Miller Buckeye Company would be entitled to recover in this suit, under the following provision of the Code of Civil Procedure of the State of Kansas. Section 4907, General Statutes of 1905, reads as follows:

"An action does not abate by the death or other disability of a party, or by the transfer of any interest therein during its pendency, if the cause of action survive or continue. In case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party or the court may allow the person to whom the transfer is made to be substituted in the action."

In construing the latter part of that section, the Supreme Court of Kansas, in 54 Kan., 250, says:

"The defendants claim that the evidence shows that the account sued on did not belong to the plaintiffs. The

evidence does show that the account belonged to the plaintiffs at the time suit was brought, and was afterward assigned by them, but to whom it was assigned is not shown. Section 40 of the Code (Sec. 4907 above quoted), expressly provides that in case of a transfer of the claim sued on the action may be continued in the name of the original party."

And it was decided in this case that if the Altman, Miller & Company had a right to recover, the Altman & Miller Buckeye Company would have the same right, but the Supreme Court of the state decided that inasmuch as the Altman, Miller & Company had not complied with the laws of Kansas relating to foreign corporations that would bar the purchaser of its assets from maintaining suits in Kansas.

The Galveston Rope Company is in exactly the same condition as the Altman & Miller Buckeye Company, it having acquired all the property by purchase from the assignee of the Galveston Rope & Twine Company, the latter company having obtained judgment against C. C. Vickers in Morris County, Kansas, while it was a going concern in 1895 (Record p. 361), and it had a right, under the Code of Kansas, to have its judgment enforced in the name of the original party, or the name of the purchaser of the judgment substituted in its stead.

However, conceding, for the sake of argument only, that the Consolidated Steel & Wire Company, the Altman & Miller Buckeye Company and the Galveston Rope & Twine Company are not proper parties in error, then, under the general rules of equity and the provisions

of the Code under which these suits were prosecuted in the State of Kansas, the other plaintiffs in error have a right to be heard and their rights determined the same as though these three corporations were not joined with them.

FEDERAL QUESTIONS PRESENTED AS TO PLAINTIFFS IN ERROR.

These plaintiffs in error having been engaged exclusively in interstate commerce, the application of the corporation laws of Kansas to them is repugnant to the interstate commerce clause of the Constitution of the United States, and such application cannot lawfully be made.

The case of *Cooper Mfg. Co. vs. Ferguson and Harrison*, 113 U. S. 727, is squarely in point, and especially the language used by Mr. Justice Matthews on behalf of himself and Justice Blatchford, in concurring in the opinion of the court, is peculiarly applicable to the case at bar.

We quote Mr. Justice Matthews' language, in that case, as follows:

"Whatever power may be conceded to a state, to prescribe conditions on which foreign corporations may transact business within its limits, it cannot be admitted to extend so far as to prohibit or regulate commerce among the states; for that would be to invade the jurisdiction which, by the terms of the Constitution of the United States, is conferred exclusively upon Congress.

In the present case the construction claimed for

the constitution of Colorado, and the statute of that state passed in execution of it, cannot be extended to prevent the plaintiff in error, a corporation of another state, from transacting any business in Colorado, which, of itself, is commerce. The transaction in question was clearly of that character. It was the making of a contract in Colorado to manufacture certain machinery in Ohio, to be there delivered for transportation to the purchasers in Colorado. That was commerce; and, to prohibit it, *except upon conditions*, is to regulate commerce between Colorado and Ohio, which is within the exclusive province of Congress. It is quite competent, no doubt, for Colorado to prohibit a foreign corporation from acquiring a domicile in that state, and to prohibit it from carrying on within that state its business of manufacturing machinery. But it cannot prohibit it from selling in Colorado, by contracts made there, its machinery manufactured elsewhere, for that would be to regulate commerce among the states."

These plaintiffs in error were entitled to bring and maintain these suits in the courts of the State of Kansas upon the same terms and upon the same footing as an individual citizen of the states of their creation, and of which these corporations were citizens, under Section 2, Article 4 of the Constitution of the United States. 133 U. S., 107.

This court has time and again decided that the manner of these people in dealing with the citizens of Kansas, as found by the trial court in findings Nos. 3 and 4 (Record p. 35), is interstate commerce. The leading case is *Stockard vs. Morgan*, 40 Law Ed., 785 (185 U. S., 27). In deciding that case, Mr. Justice Peckham, speaking for the court, cites the following:

Brown vs. Maryland, 12 Wheat., 419, 6 L. Ed., 678.

Welton vs. Missouri, 91 U. S., 275; 23 L. Ed., 347.

Robbins vs. Shelby County Taxing Dist., 120 U. S., 489; 30 L. Ed., 694.

1 Inters. Com. Rep., 45, 7 Supt. Ct. Rep., 592

which Mr. Justice Peckham says is one of the leading cases upon the subject now in hand, and we think that it is decisive of the case before us, he says. That case was brought upon an agreed statement of facts, which he quotes, as follows:

"Sabine Robbins is a citizen and resident of Cincinnati, Ohio, and on the ..... day of ....., 1884, was engaged in the business of drumming in the taxing district of Shelby County, Tennessee, *i. e.*, soliciting trade by the use of samples for the house or firm for which he worked as a drummer, said firm being the firm of Rose, Robbins & Co., doing business in Cincinnati, and all the members of said firm being citizens and residents of Cincinnati, Ohio. While engaged in the act of drumming for said firm, and for the claimed offense of not having taken out the required license for doing said business, the defendant, Sabine Robbins, was arrested by one of the Memphis or taxing district police force, and carried before the Hon. D. P. Hadden, president of the taxing district, and fined for the offense of drumming without a license. It is admitted the firm of Rose, Robbins & Co. are engaged in the selling of paper, writing materials and such articles as are used in the book stores of the taxing district of Shelby County, and that it was a line of such articles for the sale of which the said defendant herein was drumming at the time of his arrest.

The court held upon these facts that the statute of Tennessee of 1881 enacted that 'all drummers and all

sons as not having a regular licensed house of business in the taxing district of Shelby County,' offering for sale or selling goods, wares or merchandise therein by sample shall be required to pay to the county trustee the sum of $10 per week, or $25 per month, for such privilege.' was held as against Robbins."

Then he quotes Mr. Justice Bradley's opinion in that case, which is too long to be copied herein in full, but the principle in that case, and in all like cases subsequently decided by this court, is that citizens of other states have a right to send drummers, as they are usually called, to solicit the sale of their goods by taking orders, sending said orders into the houses which they represent in the foreign state, and if approved by the house the goods are shipped, and the money is paid direct to the house.

From these cases it will be observed that it is immaterial whether the drummer or salesman is a resident of the state in which he solicits business for his firm or has the same residence as his principal. So that so far as the business of the Buck Stove & Range Co., Samuel Cupples Wreckenware Co., St. Louis Refrigerator & Wooden Gutter Co., and St. Louis Glass & Queensware Co., is concerned, the findings show that they were doing exactly this kind of business in dealing with citizens of the State of Kansas, but the District Court of Saline County held that they were doing business in the State of Kansas within the scope of Chapter 101 of the Session Laws of 1898, as amended by Section

3 of the Session Laws of 1901, and the sentence on which the court rests its justification is as follows:

"No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made."

And the trial court, as the first conclusion of law, uses this language:

"That the plaintiffs, the Buck Stove & Range Co., the Samuel Cupples Woodenware Co., the St. Louis Refrigerator & Wooden Gutter Co., and the St. Louis Glass & Queensware Co. have each of them, ever since 1901, been doing business in the State of Kansas, within the meaning of Section 1 of Chapter 125 of the Session Laws of 1901, and that they have no right to maintain the action until they comply with the provisions of the laws of this state which prescribe the conditions upon which foreign corporations doing business in this state may maintain actions in the courts of this state."

The reason of the trial court is clear, as to why a decree was rendered against these plaintiffs, which was because they were doing business in the state within the meaning of said Chapter 125 of the Session Laws of 1901.

Now, we say that the Kansas courts were absolutely wrong in deciding that these people were doing such business in the State of Kansas, to which the statute applied, while they were doing an interstate commerce business only, with which the Kansas statute cannot in-

terfere. As we have already said, this court has time and again decided that the mode of carrying on business, as found by the trial court in this case, is interstate commerce, with which the State of Kansas had no constitutional right to interfere, and the application of said law to the plaintiffs is in contravention of the Constitution of the United States and laws of Congress relating to commerce between the states and citizens thereof (see findings 1, 2, 3 and 4, Record p. 35).

State statutes requiring foreign corporations to comply with certain conditions before doing business in the state have frequently been held inapplicable to a foreign corporation whose only business in the state is selling through traveling agents and delivering goods manufactured outside of the state, since any other construction of the statute would render it void as an interference with interstate commerce. See the following:

Havens & G. Co. vs. Diamond 93 Ill. App., 557.

Coit & Co. vs. Sutton, 102 Mich., 324; 25 L. R. A., 819; 4 Inters. Com. Rep., 768.

Toledo Com. Co. vs. Glen Mfg. Co., 55 Ohio St., 217.

Mearshon vs. Pottsville Lumber Co. 187 Pac., 12.

Bateman vs. Western Star Mill Co., 1 Tex. Civ. App., 90; 4 Inters. Com. Rep., 260; 20 S. W., 931.

Davis & R. Bldg. & Mfg. Co. vs. Pix, 64 Fed., 406.

Woessner vs. Cottam & Co. 19 Tex. Civ. App., 611; also

City of Ft. Scott vs. Pelton, 39 Kan., 764.

We think this sufficient upon this point, that these people were engaged in interstate commerce, and the statute does not apply to them, and its application to their business is unconstitutional and void.

The cases particularly applicable to the case at bar are compiled in the case of *Coit & Co. vs. Sutton*, 102 Mich., 324; 25 L. C. P., 819, and after a full discussion the court reaches this decision:

"Foreign corporations selling through itinerant agents and delivering goods manufactured outside of the state are not, in view of the commerce clause of the United States Constitution, affected by state statutes requiring foreign corporations to file their articles of association with the secretary of state and pay a franchise fee, as a condition of doing business within the state."

Also see *New Orleans Gas Light Co. vs. Louisiana Light & H. P. & Mfg. Co.*, 115 U. S., 650; 29 L. Ed., 516, and cases there cited.

THESE PLAINTIFFS IN ERROR HAD A VESTED RIGHT TO MAINTAIN AND PROSECUTE THE SUITS TO JUDGMENT.

We again call the attention of the court to the fact that the judgments upon which these suits were founded were obtained in November, 1895, and these suits were commenced June 13, 1896 (see finding No. 8, Record p. 36).

Chapter 10 of the laws passed by the special session, 1898, became effective on the 11th day of January, 1899, two years and six months after these suits were commenced.

Before the passage of that law the courts of the state were open to all corporations alike, foreign and domestic, and no restrictions of any kind placed upon foreign corporations to come into the courts of the State of Kansas and seek their remedy against any of its citizens.

Now, that being the case, was it within the power of the legislature to deprive these plaintiffs of the remedy by casting a pecuniary burden upon them? In other words, to buy justice, before being permitted to continue the suits that they had already commenced?

These plaintiffs in error, having commenced the suits long prior to the enactment of the law in question, had a vested right to maintain such suits and prosecute them to judgment, and were protected in such right by Section 10, Article 1 of the Constitution of the United States, prohibiting the states from passing any law impairing the obligation of contracts. This court has repeatedly decided that the remedy is a part of the contract, and any legislative act that deprives a party of a remedy is repugnant to the provisions of said Section 10.

We refer the court to *Osborn vs. Nicholson*, 13 Wal. (U. S.), 654; *Fitzgerald vs. Weidenbeck*, 76 Fed., 695.

In *Martindale vs Moore*, 3 Blackf. (Ind.), 275, a vested right is defined as follows:

"The right the person has, in whom it vests, to do certain acts; or to possess, occupy, own or enjoy certain

things: or to ask, demand, recover and receive certain things, according to the law of the land at that time."

In *Root vs. Sweeney*, 12 S. D., 43; 80 N. W., 149, we find this language:

"An act imposing conditions on foreign corporations to entitle them to maintain actions cannot affect an action which has already been brought by a corporation from another state, as it has a vested right to continue such action."

Also see *Elston vs. Piggott*, 94 Ind., 14; *Maguiar vs. Henry*, 84 Ky., 1; 7 Ky. L. Rep., 695; 4 Am. St. Repp., 182; and *Veatman vs. Day*, 79 Ky., 186.

At page 932 Cyc., Vol. 8, we have this principle laid down:

"Any law which in its operation amounts to a denial or obstruction of the rights accruing by the contract, although professing to act only on the remedy, is directly obnoxious to the prohibition of Art. 1, Sec. 10, of the Constitution." Citing *Williams vs. Bruffy*, 96 U. S., 176; *Westerly Waterworks vs. Westerly*, 75 Fed., 181, and many other cases.

It is intimated in the brief of the counsel for the other side that corporations are different from individuals, but that contention has been passed upon by this court in *Norfolk & Western R. R. Co. vs. State of Pennsylvania*, 136 U. S., 114, in which the court says:

"A corporation for the purpose of jurisdiction is a citizen of the state of its creation and as such is en-

titled to the protection of the interstate commerce clause of United States Constitution."

Again, this court, in *Missouri Railway Co. vs. Patrick*, 127 U. S., 205, uses this language:

"It is conceded that corporations are persons, within the meaning of the 14th Amendment."

See also *Santa Clara County vs. Pa.*, 125 U. S., 181.

WERE THE KANSAS CORPORATION LAWS RETROACTIVE?

Evidently the Kansas courts construed the law in this case as retrospective, which is contrary to all rules of construction in respect to laws not specifically stating that they are retrospective.

In the American & English Encyclopedia of Law, First Edition, page 757, we find this language:

"It is an inflexible rule that a statute will be construed as prospective and operating *in futuro* only unless the intention of the legislature to give it a retrospective effect is expressed in language too clear and explicit to admit of a reasonable doubt. And where the retroactive character of a statute is clearly indicated on its face, and although it is free from constitutional objections, yet it will always be subjected to the most circumscribing construction that can possibly be made consistent with the intention of the legislature."

Also in *Auffm'ordt vs. Ras'n*, 102 U. S., 623 (26 L. C. P., 262), the court uses this emphatic language:

"No law will be construed to act retrospectively

unless its language imperatively requires such a construction."

The law above referred to, being Chapter 10 of the Laws of 1898, and its amendment by Chapter 125 of the Laws of 1901, is silent upon the question as to whether it is retroactive or prospective, and, being silent, under the rule of construction, and the authorities above named, it is prospective only and does not apply in any event to suits pending before its passage, hence the court erred in refusing to render a decree in favor of these plaintiffs and in dismissing the suits.

In 89 Ill., Ct. App., 670, that court holds that a statute quite similar to ours is prospective and not retroactive in its operation, and does not apply to suits to enforce contracts made prior to the passage of the act, and it cites authorities holding that the remedy or means of enforcing a contract is a part of the obligation of a contract, which is protected against impairment by retroactive legislation.

In *Gunn vs. Barry*, 82 U. S., 624; 21 L. C. P., 212, the court uses this language:

"The legal remedies for the enforcement of a contract which apply to it at the time and place where it is made, are a part of its obligation. A state may change them, providing the change involves no impairment of a substantial right. If the provision of the constitution, or the legislative act of the state fall within the category last mentioned, they are to that extent utterly void. They are for all the purposes of the contract which they impair as if they never existed."

See also 96 U. S., 595, and 96 U. S., 64; also 36 Atlan. Rep. (N. J.), 692, and in *Bartruff vs. Remey*, 15 Ia., 257, this language is used:

"The general rule is that whenever the intention to make it retrospective in its operation is not clearly expressed on its face, it will be construed to commence after its enactment."

So, from any viewpoint, it is clear to us that the corporation laws of the State of Kansas, passed since these suits were commenced, never did apply and never can apply, and the Kansas courts erred in applying them to these suits.

Summing it all up, we contend that the motion to dismiss ought to be denied, for the following reasons:

First. There is no misjoinder of plaintiffs.

Second. The record presents a federal question under the interstate commerce clause of the Constitution of the United States.

Third. The record presents a federal question under the provision prohibiting impairment of contracts.

Fourth. The record presents a federal question under Section 2 of Article 4, and the 14th Amendment to the Constitution of the United States, in that the plaintiffs in error by the decision of the Supreme Court of Kansas were deprived of their property without due process of law and denied the equal protection of the laws.

In view of what we have already said, we do not

deem it necessary to say anything on the motion of defendants in error to affirm, and as all the questions presented by the record are before the court in the discussion of the motions, we feel that we are justified in asking the court at this time to reverse the judgment of the Supreme Court of Kansas, with such directions as the court may deem proper to make.

Seneca A. Taylor
Malcolm B. Nathrop
William J. Pruitt,
Attorneys for Plaintiffs in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1909.—No. [redacted] 181

BUCK STOVE & RANGE COMPANY,
a corporation, et al.,
Plaintiff in Error,

vs.

C. C. VICKERS, MARY P. VICKERS,
and P. B. MAXSON,
Defendants in Error.

No. 21,824.

MOTION TO DISMISS AND TO AFFIRM AND BRIEF AND ARGUMENT THEREON.

STEPHEN H. ALLEN,
ROBERT STONE,
ALLEN & ALLEN,
Attorneys for defendants in error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1909.—No. 598.

BUCK STOVE & RANGE COMPANY,
a corporation, et al.,
Plaintiff in Error,

vs.

C. C. VICKERS, MARY P. VICKERS,
and P. B. MAXSON,
Defendants in Error.

No. 21,824.

MOTION TO DISMISS.

Now come the defendants in error, C. C. Vickers, Mary P. Vickers and P. B. Maxson, and respectfully state to the Court that the plaintiffs in error seek in this case to reverse a judgment of the Supreme Court of Kansas, affirming a judgment of the district court of Saline county, Kansas, rendered in an action brought by seven corporations organized under the

laws of states other than Kansas, to subject certain lands belonging to the defendant, P. B. Maxson, to the payment of judgments rendered in favor of the plaintiffs in error, severally, against C. C. Vickers *et al.*, on the ground that such land had been conveyed by Vickers to Maxson in fraud of the creditors of Vickers. No contractual relation was claimed to have existed between the plaintiffs or any of them and Maxson, but the action was prosecuted solely for the purpose of taking Maxson's property for Vickers' debts because of alleged fraud in the transfer from Vickers to Maxson.

Two actions were brought in the district court of Morris county, in one of which the Buck Stove & Range Company, Samuel Cupples Woodenware Company and Altman, Miller & Company were plaintiffs, and in the other Consolidated Steel & Wire Company, St. Louis Refrigerator & Wooden Gutter Company, St. Louis Glass & Queensware Company and Galveston Rope & Twine Company were plaintiffs. These actions were consolidated for trial and the venue afterward changed to Saline county, where the cases were tried and determined.

In the Supreme Court of Kansas, Altman & Miller Buckeye Company, claiming to be the successor in interest of Altman, Miller & Company and Galveston Rope Company, claiming to be successor in interest of

Galveston Rope & Twine Company, were joined as plaintiffs in error, although neither of them was ever made a party in the trial court, and they again appear as plaintiffs in error in this Court. The Consolidated Steel & Wire Company went out of existence October 23, 1899, by voluntarily surrendering its charter in accordance with the laws of the State of Illinois, from which its charter had been obtained, but its name appears as a joint plaintiff in error in the Supreme Court of Kansas and again in this Court.

The defendants moved to dismiss the action on the ground that the plaintiffs were each and all foreign corporations doing business in the state and that neither of them had complied with the law of the state by filing a statement of the condition of the corporation as required by the statute. (Record p. 7.) The same question was afterward raised by amended answers. (Record, pp. 8 to 18.)

Section 12, chapter 10 of the laws of 1898, as amended by section 3, chapter 125 of the laws of 1901 and which now appears as Section 42 of Ch. 23 of the General Statutes of 1905, is as follows:

"Sec. 42. It shall be the duty of the President and Secretary or the managing officer of each corporation for profit doing business in this state, except banking, insurance and railroad corporations, annually, on or before the first day of August, to prepare and deliver to the secretary of state a complete detailed statement of the condition of such corporation on the 30th day

of June next preceding. Such statement shall set forth and exhibit the following, *namely:* 1st. The authorized capital stock; 2nd. The paid up capital stock; 3rd. The par value and the market value per share of said stock; 4th. A complete and detailed statement of the assets and liabilities of the corporaiton; 5th. A full and complete list of the stockholders, with the post office address of each, and the number of shares held and paid for by each; 6th. The names and post office addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held. Such report shall be made upon and in conformity to blanks prepared by the secretary of state and approved by the charter board. The fee for filing such report and making a certificate that the same has been made and is on file shall be one dollar. The secretary of state may at any time require a further or supplementary report under this section, which shall contain the same information and data as specified in the annual report herein required; and the failure of any such corporation to file the statement in this section provided for within ninety days from the time provided for filing the same shall work the forfeiture of the charter of any corporation organized under the laws of this state, and the charter board may at any time thereafter declare the charter of such corporation forfeited, and upon the declaration of any such forfeiture it shall be the duty of the attorney general to apply to the district court of the proper county for the appointment of a receiver to close out the business of such corporation; and such failure to file such statement by any corporation doing business in this state and not organized under the laws of this state shall work a forfeiture of its right or authority to do business in this state, and the charter board may at any time declare such forfeiture, and shall forthwith publish such declaration in the official state paper. It shall also be the duty of the president and secretary of any such corporation organized under the laws of this state, as soon as any transfer, sale or

change of ownership of any such stock is made as shown upon the books of the company, to file with the secretary of state a statement of such change of ownership, giving the name and address of the new stockholder or stockholders, the number of shares so transferred, the par value, and the amount paid on such stock. No transfer of such stock shall be legal or binding until such statement is made as provided for in this act. The record of the secretary of state shall be *prima facie* evidence of the stockholders of such corporation, the number of shares held by each, and the amount paid on each share of capital stock. *No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the secretary of state that statements provided for in this section have been properly made.*"

On March 26, 1907, after the conclusion of the trial, the court made its findings of fact and conclusions of law (Record, pp. 35 to 42) and among other facts found that the Buck Stove & Range Co., Samuel Cupples Woodenware Co., St. Louis Refrigerator & Wooden Gutter Co., and St. Louis Glass and Queensware Co., were each foreign corporations organized under the laws of the state of Missouri, and that they were doing business in Kansas within the meaning of the section of the statute above quoted, and that they had no right to maintain the action until they complied with the provisions of the statute. (Record, pp. 35 and 41) Thereupon the court granted these corporations until August 27, 1907, to present evidence of compliance with the law. (Record, p. 42.)

The court further found that Altman, Miller & Company was declared a bankrupt in 1903 by the United States District court for the Northern District of Ohio and then ceased to do business; that no revivor of the action or substitution of the Altman & Miller Buckeye Co. was made until May, 1908, when an order of substitution was made without the consent of the defendants; that the Galveston Rope & Twine Company, a Texas corporation, had no interest in the judgment on which its suit was founded at the time of the commencement of the action, and forfeited its charter in 1896, and that the Galveston Rope Company has never been a party to the action. (Record, p. 36.)

On August 27, 1907, the four Missouri corporations, which had been doing business in Kansas without compliance with the law above quoted, filed their statement in writing declining to comply with the order of the court requiring them to present evidence of compliance with the law. (Record, p. 44.) It was then shown to the court by appropriate proof that the Consolidated Steel & Wire Company went out of existence on November 23, 1899, by voluntarily surrendering its corporate franchise. (Record, p. 45.)

The court thereupon dismissed the cases as to all the corporations which were still going concerns, and ordered that the action be abated as to the Consolidated Steel & Wire Co., Altman, Miller & Co. and the

Galveston Rope & Twine Co. No judgment or order whatever was entered against either the Altman & Miller Buckeye Co. or the Galveston Rope Co. Judgment for costs was entered against the Buck Stove & Range Co., Samuel Cupples Woodenware Co., St. Louis Refrigerator and Wooden Gutter Co. and St. Louiis Glass & Queensware Co. but not against any of the other corporations.

The judgment and orders so made have been affirmed by the Supreme Court of Kansas and from its judgment seven corporations, among which are included Altman & Miller Buckeye Co. and Galveston Rope Co. which were not parties in the district court, are joined in a writ of error from this court to the Supreme Court of Kansas, while Altman, Miller & Co. and Galveston Rope & Twine Co. which were parties in the district court, do not appear as plaintiffs in error here.

The only assignments of error which suggest a federal question are the 10th, 15th, 16th, 17th, 18th, and 19th and these questions, though not clearly stated, seem to be that the Kansas statute above quoted is void as applied to this case under the Inter-state Commerce Clause of the Constitution of the United States, and that the statute also impairs the obligations of contracts. (Record, pp. 2 and 3.)

And thereupon said defendants in error move the court to dismiss the writ of error herein upon the grounds and for the reasons following to-wit:

1. This court has no jurisdiction of the subject matter of said cause or of any question presented by the record herein.

2. The Consolidated Steel & Wire Company does not exist, and therefore cannot join or be joined as a plaintiff in error, and cannot present a federal or any other kind of a question for the consideration of this Court.

3. The Altman & Miller Buckeye Company and the Galveston Rope Company, having never been parties to the judgment rendered by the district court of Saline county, cannot prosecute a writ of error to this Court to reverse that judgment, and the refusal of the district court to make them parties does not present any question under the constitution or laws of the United States, or other basis for the jurisdiction of this court.

4. The dismissal of the actions of the four Missouri corporations for refusal to file their statements as required by the law of Kansas presents a question merely as to the exercise of a corporate power, *viz*, the power to maintain an action in a court of Kansas, and does not present any question as to the regulation of inter-state commerce or the obligation of contracts or other question which this Court has jurisdiction to determine.

5. The statute of Kansas does not in terms or in effect regulate or restrict, or attempt to regulate or

restrict, inter-state commerce but does regulate the exercise of corporate powers by corporations, both domestic and foreign, and the decision of the Supreme Court of the state as to its construction and effect is final and conclusive on this Court.

6. The record does not present a question relating to the obligation of contracts, because no contractual relation existed between P. B. Maxson and the plaintiffs, who sought to take his property for the payment of the debt of another. The action was based on an alleged wrong, a fraud, and not on any allegation of contract.

7. Joint errors only are assigned in this Court by all the plaintiffs in error jointly, (Record, pp. 1, 2 and 3) while the orders and judgment of the District Court of Saline County, which were affirmed by the Supreme Court of Kansas, were several as to each of the plaintiffs in error, based on different states of fact, which related to and affected each plaintiff in error severally, and not any two or more of them jointly.

STEPHEN H. ALLEN,

ROBERT STONE,

Attorneys for defendants in error.

MOTION TO AFFIRM.

The said defendants in error also move the courts to affirm the judgment of the Supreme Court of Kansas herein on the ground that although the record may show that this court has jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument, and because the question of law sought to be raised has been already decided by this Court.

STEPHEN H. ALLEN,

ROBERT STONE,

Attorneys for defendants in error.

BRIEF AND ARGUMENT.

THERE ARE NO ASSIGNMENTS OF ERROR WHICH THE COURT CAN CONSIDER.

The nineteen assignments of error are all made jointly by all the plaintiffs in error. (Record, pp. 1, 2 and 3.) So far as the Consolidated Steel & Wire Company is concerned it can make no complaint and raise no question, federal or state, because it is dead. The only complaint anyone else can make for it is that it was denied relief because it was dead and because no relief could be given to so dead a corporation. Neither of the other plaintiffs in error has any interest in the question or right to vex this court with questions raised in its behalf.

As to the Galveston Rope Company and the Altman & Miller Buckeye Company, the only question that can be raised on the record is whether they are parties to the record, and that question admits of but one answer. They are not parties. Neither of the other plaintiffs in error has any interest in this question or right to raise it, nor have these two corporations any common ground of complaint, for they were denied relief on entirely different grounds, applicable to each of them severally, and not in any particular to both

of them jointly, nor involving any question of a Federal character.

As to the other plaintiffs in error, they cannot get into this Court yoked with a dead corporation and two outsiders, which were not parties to the case below, nor have they as between themselves any joint ground of complaint. Their business was several and the showing as to each was separate and distinct. Taking all these corporations together and it is apparent that there is no common basis for the jurisdiction of this Court and no joint or common question for its consideration.

"A joint assignment of error which cannot be sustained as to all who join therein is bad as to all."

3 Cen. Digest, Sec. 2985, and authorities cited.

"An assignment of errors, like a pleading, must set forth errors which are available to all who join in it. If not good as to all it will not be good as to any. And a joint assignment not good as to all will be defective although it contains proper separate specifications of error."

2 Encyc. Pl. and Pr., 933, and cases cited in the notes.

"Upon a joint assignment of error one of several appellants or plaintiffs in error cannot avail himself of errors which are not common to all his co-appellants but which affect him alone. Nor can parties jointly assign error or take advantage of errors which affect them severally and not jointly. It is an elementary and well-settled rule that joint assignments of error must be good as to all who join therein, or

they will not be available as to any of them. If the assignment of error is not good as to one, it will be overruled as to all. This doctrine has been applied in a host of decisions, and under widely-varying circumstances. Thus a joint assignment of error by several appellants presents no question as to a ruling against one of the appellants only, and is ineffective for any purpose. Accordingly a joint assignment of error by several to the ruling of the court on the separate demurrer of one of them presents no question for the appellate court. A joint assignment of error based upon the action of the court in overruling a motion for a new trial cannot be considered on appeal, where the motion for a new trial appearing in the records was the sole and separate motion of one of the appellants. It has also been held that where parties join in a demurrer, which is overruled as not being good as to one, the other party, if the overruling is error as to him, can make it available only on a separate assignment of error. If appellants jointly assign as error the rulings on the separate demurrers of each, and separate motions for a new trial, such an assignment of error presents no question for the decision of the appellate court, nor is a defect of this character waived by a joinder in error. If a party for whom judgment was rendered and the other appellants jointly assign errors, the assignment will be bad and the appeal will be dismissed. A joint assignment of errors by several defendants, that the complaint does not charge facts sufficient to constitute a cause of action, cannot be sustained unless the complaint is bad as to all."

2 Cyc. 1003, and authorities cited.

"As the verdicts and judgments were several the writ of error sued out by the defendants jointly was superfluous and may be dismissed without costs, and upon each of the writs of error sued out by the defendants severally the order will be judgment reversed."

Mutual Life Ins. Co. vs. Hillmon, 145 U. S. 285.

We respectfully submit that the assignments of error are insufficient to present any question for the consideration of this Court.

NO FEDERAL QUESTION IS PRESENTED AS TO ANY PLAINTIFF IN ERROR.

No question as to the power of the legislature of Kansas to regulate, tax, restrict, or control inter-state commerce is presented by the record. The section of the statute above quoted imposes as a condition to the use of the courts of the state by corporations, whether domestic or foreign, that they shall file annual statements showing the condition of their affairs for the information of the public. In the passage of this statute the legislature had in view regulation of the exercise of corporate powers, not regulation of commerce, manufacturing, agriculture, or any other industry. For a corporation to sue or maintain a suit or recover a judgment is to exercise a corporate power. This power it can derive only from the state. One of the powers acquired by every corporation by virtue of its charter is, "to sue or be sued", (1 Blackstone, 475), "second, to maintain and defend judicial proceedings," Gen. Stats. of Kansas, 1905, Ch. 23, Sec. 25. Clearly a domestic corporation acquires its power in Kansas to maintain and defend judicial proceedings from the legislature. It is immaterial what the

business of the corporation may be. Suppose a Kansas corporation to be engaged solely in inter-state commerce, as the exportation of grain from Kansas to other states, can there be any doubt as to the power of the legislature of Kansas to prescribe the terms on which a domestic corporation of that kind shall exercise any corporate power, or on which it may be admitted to maintain suits in its courts? If the power of the state to prescribe the terms on which domestic corporations may exercise their powers within its territory is plenary, can foreign corporations demand protection from its courts while refusing to comply with the terms imposed alike on them and on domestic corporations? The law is well settled by a long line of decisions of this Court that the terms on which a foreign corporation may exercise corporate powers within any state may be fixed by such state in its discretion and without being subject to any supervision or control by federal authority. The statute under consideration, as construed by the Supreme Court of the state, does not render contracts made by foreign corporations with citizens of the state void, where the corporation fails to comply with the law, nor does it absolutely deny a remedy in the courts of the state. It is held to be the duty of the court after proof of failure to comply with the law to still afford an opportunity to do so, and where the statements are filed out of time, or even where there is a *bona fide* effort

to comply, the suit will not be dismissed. (See prior decision of the Supreme Court of Kansas in this case, *Vickers vs. Buck*, 70 Kan., 584, and *Jordan vs. Telegraph Co.*, 69 Kan., 140.) In this case the court afforded the plaintiffs ample opportunity to comply with the law. They were given from March 26 to August 27, five months and a day, in which to file their statements and present their certificates to the court showing that they had done so. They not only failed to comply with the law, but came into court and deliberately refused to do so. (Record, p. 44.) Under such circumstances it is perfectly clear that a Kansas corporation, even though engaged exclusively in interstate commerce, would have been denied relief, and that it would have had no question to present to this Court for its consideration. Can it be seriously contended that a Missouri corporation has superior rights to a domestic corporation under identically the same state of facts? The facts on which the decision of the Supreme Court of Kansas was based are not open to question in this Court.

"The decisions of state courts upon questions of fact are not reviewable by writ of error to those courts from the Supreme Court of the United States."

Chapman & Dewey Land Co. vs. Bigelow, 206 U. S., 41;

Thayer vs. Spratt, 189 U. S., 346;

Gleason vs. White, 109 U. S., 854;

Israel vs. Arthur, 152 U. S., 355;

Eau Claire Natl. Bank vs. Jackman, 204 U. S. 522;

Dower vs. Richards, 151 U. S., 658.

"The scope and meaning of a state statute, as determined by the highest court of the state, conclude the federal Supreme Court in determining on writ of error to the state court whether or not such statute violates the federal constitution."

Smiley vs. Kansas, 196 U. S., 447;

National Cotton Oil Co. vs. Texas, 197 U. S. 115;

Tampa Waterworks Co. vs. Tampa, 199 U. S. 241.

"The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta vs. Earle*, 'It must dwell in the place of its creation and cannot migrate to another sovereignty'. The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will

best promote the public interests. The whole matter rests in their discretion."

Paul vs. Virginia, 8 Wal., 168;

Ducat vs. Chicago, 10 Wal., 410;

Horn Silver Mining Co. vs. State of New York, 143 U. S., 305.

"The principle that the right of a foreign corporation to engage in business within a state other than that of its creation depends solely upon the will of such other state has been long settled and many phases of its application have been illustrated by the decisions of this court." . . .

"It is evident, then, as we have said above, that the attempt to so distinguish between policies of marine insurance and policies of fire insurance, as to reach the deduction that there is a constitutional difference between the business of a corporation issuing policies of one kind and that of a corporation dealing in policies of the other kind, which affects the question of the state's authority to control the business of either, is based upon a fundamental misconception of the nature of the constitutional provision relied upon. It ignores the real distinction upon which the general rule and its exceptions are based, and which consist in the difference between interstate commerce or an instrumentality thereof on the one side and the mere incident which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which such commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude state control over many contracts purely domestic in their nature.

"The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against 'the perils of the sea'. The state of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or a marine business. She has the power, if she allows any such companies to enter her confines, to determine the condition on which the entry shall be made. And as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting who is in her jurisdiction with any foreign company which had not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the state which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

Hooper vs. California, 155 U. S., 648.

This Court has upheld far more drastic legislation, designed to regulate the business of foreign corporations, than that now under consideration. In the case of *Chattanooga National B. & L. Assn. vs. Denson*, 189 U. S., 408, a bill to foreclose a mortgage taken in

Alabama by a Tennessee building and loan association without compliance with the corporation laws of Alabama was dismissed because the corporation was doing business in the state in violation of law, although the making of this loan upon the written application of the borrower, obtained by a traveling agent of the association, was the only business shown to have been done by the association within the state.

"The offence of a failure to comply with the corporation laws of the state of Kansas was an offence against the state and not against the complainants in this suit. For that offence the state had ample remedy. It could prevent the maintenance of actions by this corporation in its courts."

Blodgett vs. Lanyon Zinc Co., C. C. A. 120 Fed., 893-8.

It has been held that the prohibition to sue in the courts of the state does not deprive the federal courts within the state of jurisdiction.

Id. 120 Fed. 893;

Sullivan vs. Beck, 79 Fed., 20.

"The courts of equity in this state are not open to the plaintiff" (a New Hampshire corporation) "as matter of strict right, but as matter of comity; *Smith vs. Mutual Life Ins. Co.*, 14 Allen, 336, 339."

National Tel. Mfg. Co. vs. Du Bois, 165 Mass., 117.

Erie Ry. Co. vs. State, 31 N. J. L., 531.

19 Cyc., 1315.

Statutes similar to the one under consideration exist

in many states, while in other states more stringent provisions have been enacted, either utterly prohibiting the transaction of business within the state or rendering contracts made without compliance with the statute utterly void. Such statutes, even though regarded as unreasonable in their terms, have been held to be within the legislative power of the state and enforced according to their terms, 19 Cyc. 1298.

The question here presented is as to the right of a foreign corporation to prosecute an action for a tort in a court of the state of Kansas. That right has been denied, and the reason for its denial is that the plaintiffs have refused to comply with a police requirement now almost universally found in the legislation of the states. Interstate commerce is not primarily or secondarily affected by the decision under consideration. It is not affected at all, for the plaintiffs were not excluded from doing business in the state. They were not taxed for doing it, and the contracts made by them are not even made unlawful. They had their option to comply with the law within the time allowed them by the court and take their judgment, or to refuse to comply with it and go out of court. They chose the latter course and the court merely enforced the law of the state governing the conditions under which a foreign corporation may use its courts.

The fact that a foreign corporation is engaged in interstate commerce under authority of Congress will not make void a tax imposed on that part of the business of the corporation done exclusively within the state.

Postal Telegraph Co. vs. Charleston, 153 U. S., 692.

It is within the power of a state to render the contract of a corporation which fails to comply with its police requirements absolutely void and the federal court will enforce such statute.

"This is an action upon a written contract alleging a breach and claiming damages. It was brought in the United States Circuit Court for the Eastern District of Wisconsin by an Illinois corporation against a Wisconsin corporation. On June 25, 1898, the date when the contract was made, a law had been enacted in Wisconsin, to go into operation later, on September 1, 1898, requiring corporations incorporated elsewhere to file a copy of their charter with the secretary of state, and to pay a small fee as a condition of doing business there. (Wis. Stat. 1898, Secs. 1770b-4978.) This it was admitted that the plaintiff had not done, and the defendant set up that the contract was a contract to do business in Wisconsin after the statute took effect, and that the defendant was justified by the statute in declining to go on. The judge sustained this defence, and the plaintiff excepted, contending that the statute did not, and could not, constitutionally affect its rights under the contract in question. . . .

"A prohibition of the doing of business after a statute goes into effect is not retroactive with regard to that business, even though the business be done in pursuance of an earlier contract. The suggestion needing discussion is whether the statute impairs the ob-

ligation of the contract. We are of opinion that it is not open to that objection. We leave on one side the question how the obligation of a contract can be impaired by a law enacted before the contract was made. *Tenney vs. Nelson*, 183 U. S. 144. Again, we need not consider in all its full breadth whether or how far, notwithstanding *Security Sav. & L. Asso. vs. Elbert*, 153 Ind. 198, a corporation, by making a contract reaching years into the future, can exonerate itself from all police or license laws, on the ground that by indirection they make performance of the contract more difficult to an infinitesimal degree. Compare *Curtis vs. Whitney*, 13 Wall. 68, 71, *Bedford vs. Eastern Bld. & L. Asso.*, 181 U. S. 227, 241. We shall advert to parallel considerations in connection with the alleged interference with commerce between the states. The prohibition in this case is not absolute, but is only conditional on the failure to deposit a copy of the plaintiff's charter and to pay a small fee. It is merely incident to a regulation which, but for the contract, unquestionably would be proper, and which is familiar in the laws of the state. It can be avoided by compliance with the regulations. We are not prepared to say that the regulation would be unreasonable or invalid as to such a contract as this, even if enacted after the contract was made. But we rest our decision upon the narrower ground of the foregoing consideration taken in connection with what we are about to say. . . .

"In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernable, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made."

Diamond Glue Co. vs. United States Glue Co.,
187 U. S., 611.

No question was raised either in the district court or the Supreme Court of Kansas under section 2 of Article IV of the Constitution of the United States, but if such a question had been raised it would have been of no avail to the plaintiffs in error for the law is well settled by the decisions of this Court that a corporation is not a citizen within the meaning of the constitutional provision that, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Pembina Mining Co. vs. Pennsylvania, 125 U. S., 181;

Blake vs. McClung, 172 U. S., 239.

Whatever doubts may have been formerly entertained on the subject, it is now well settled law that the right of a foreign corporation to exercise its corporate powers within a state other than that of its creation depends solely upon the will of such other state.

Waters Pierce Oil Co. vs. Texas, 177 U. S., 28;

People vs. Roberts, 171 U. S., 658.

As this is the only question in fact presented by the record and as no attempt has been made by the state of Kansas to interfere with interstate commerce, or to lay any tax or burden on it, we respectfully submit that the record fails to present any question which this Court has jurisdiction to determine, and that the writ of error herein should therefore be dismissed.

Waters Pierce Oil Co. vs. Texas, 212 U. S., 112.

If, however, the Court should be of opinion that it has jurisdiction of the cause, we further respectfully submit that the questions presented by the record have been finally and definitely settled by prior decisions of this Court, and that there is no longer room for controversy in this Court on any proposition involving a federal question which was decided or ought to have been decided by the Supreme Court of Kansas.

Stephen H. Allen

Robert Stone

Allen & Allen

Attorneys for defendants in error.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.—No. 10

BUCK STOVE & RANGE COMPANY,
a corporation, et al.,
Plaintiff in Error,
vs.
C. C. VICKERS, MARY P. VICKERS,
and P. B. MAXSON,
Defendants in Error.

No. 21,[illegible]

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

STEPHEN H. ALLEN,
ROBERT STONE,
ALLEN & ALLEN,
Counsel for defendants in error.

[illegible] PRINTING CO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.—No. 131.

BUCK STOVE & RANGE COMPANY, a corporation, et al., *Plaintiff in Error,*
vs.
C. C. VICKERS, MARY P. VICKERS, and P. B. MAXSON, *Defendants in Error.*
No. 21,824.

At the October, 1909, term of the Court the defendants in error filed and submitted on briefs their motion to dismiss the writ of error herein for want of jurisdiction. The hearing on the motion was then continued to be heard with the case on the merits.

The motion, omitting the caption, is as follows:

MOTION TO DISMISS.

Now come the defendants in error, C. C. Vickers, Mary P. Vickers and P. B. Maxson, and respectfully state to the Court that the plaintiffs in error seek in this case to reverse a judgment of the Supreme Court

of Kansas, affirming a judgment of the district court of Saline county, Kansas, rendered in an action brought by seven corporations organized under the laws of states other than Kansas, to subject certain lands belonging to the defendant, P. B. Maxson, to the payment of judgments rendered in favor of the plaintiffs in error, severally, against C. C. Vickers *et al.*, on the ground that such land had been conveyed by Vickers to Maxson in fraud of the creditors of Vickers. No contractual relation was claimed to have existed between the plaintiffs or any of them and Maxson, but the action was prosecuted solely for the purpose of taking Maxson's property for Vickers' debts because of alleged fraud in the transfer from Vickers to Maxson.

Two actions were brought in the district court of Morris county, in one of which the Buck Stove & Range Company, Samuel Cupples Woodenware Company and Altman, Miller & Company were plaintiffs, and in the other Consolidated Steel & Wire Company, St. Louis Refrigerator & Wooden Gutter Company, St. Louis Glass & Queensware Company and Galveston Rope & Twine Company were plaintiffs. These actions were consolidated for trial and the venue afterward changed to Saline county, where the cases were tried and determined.

In the Supreme Court of Kansas, Altman & Miller Buckeye Company, claiming to be the successor in interest of Altman, Miller & Company and Galveston Rope Company, claiming to be successor in interest of Galveston Rope & Twine Company, were joined as plaintiffs in error, although neither of them was ever made a party in the trial court, and they again appear as plaintiffs in error in this Court. The Consolidated Steel & Wire Company went out of existence October 23, 1899, by voluntarily surrendering its charter in accordance with the laws of the State of Illinois, from which its charter had been obtained, but its name appears as a joint plaintiff in error in the Supreme Court of Kansas and again in this Court.

The defendants moved to dismiss the action on the ground that the plaintiffs were each and all foreign corporations doing business in the state and that neither of them had complied with the law of the state by filing a statement of the condition of the corporation as required by the statute. (Record p. 7.) The same question was afterward raised by amended answers. (Record, pp. 8 to 18.)

Section 12, Chapter 10 of the laws of 1898, as amended by section 3, chapter 125 of the laws of 1901 and which now appears as Section 42 of Ch. 23 of the General Statutes of 1905, is as follows:

"Sec. 42. It shall be the duty of the President and Secretary or the managing officer of each corporation for profit doing business in this state, except banking, insurance and railroad corporations, annually, on or before the first day of August, to prepare and deliver to the secretary of state a complete detailed statement of the condition of such corporation on the 30th day of June next preceding. Such statement shall set forth and exhibit the following, *namely:* 1st. The authorized capital stock; 2nd. The paid up capital stock; 3rd. The par value and the market value per share of said stock; 4th. A complete and detailed statement of the assets and liabilities of the corporation; 5th. A full and complete list of the stockholders, with the post office address of each, and the number of shares held and paid for by each; 6th. The names and post office addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held. Such report shall be made upon and in conformity to blanks prepared by the secretary of state and approved by the charter board. The fee for filing such report and making a certificate that the same has been made and is on file shall be one dollar. The secretary of state may at any time require a further or supplementary report under this section, which shall contain the same information and data as specified in the annual report herein required; and the failure of any such corporation to file the statement in this section provided for within ninety days from the time provided for filing the same shall work the forfeiture of the charter of any corporation organized under the laws of this state, and the charter board may at any time thereafter declare the charter of such corporation forfeited, and upon the declaration of any such forfeiture it shall be the duty of the attorney general to apply to the district court of the proper county for the appointment of a receiver to close out

the business of such corporation; and such failure to file such statement by any corporation doing business in this state and not organized under the laws of this state shall work a forfeiture of its right or authority to do business in this state, and the charter board may at any time declare such forfeiture, and shall forthwith publish such declaration in the official state paper. It shall also be the duty of the president and secretary of any such corporation organized under the laws of this state, as soon as any transfer, sale or change of ownership of any such stock is made as shown upon the books of the company, to file with the secretary of state a statement of such change of ownership, giving the name and address of the new stockholder or stockholders, the number of shares so transferred, the par value, and the amount paid on such stock. No transfer of such stock shall be legal or binding until such statement is made as provided for in this act. The record of the secretary of state shall be *prima facie* evidence of the stockholders of such corporation, the number of shares held by each, and the amount paid on each share of capital stock. *No action shall be maintained or recovery had in any of the courts of this state by any corporation doing business in this state without first obtaining the certificate of the secretary of state that statements provided for in this section have been properly made.*"

On March 26, 1907, after the conclusion of the trial, the court made its findings of fact and conclusions of law (Record, pp. 35 to 42) and among other facts found that the Buck Stove & Range Co., Samuel Cupples Woodenware Co., St. Louis Refrigerator & Wooden Gutter Co., and St. Louis Glass and Queensware Co., were each foreign corporations organized under the

laws of the state of Missouri, and that they were doing business in Kansas within the meaning of the section of the statute above quoted, and that they had no right to maintain the action until they complied with the provisions of the statute. (Record, pp. 35 and 41.) Thereupon the court granted these corporations until August 27, 1907, to present evidence of compliance with the law. (Record, p. 42.)

The court further found that Altman, Miller & Company was declared a bankrupt in 1903 by the United States District court for the Northern District of Ohio and then ceased to do business; that no revivor of the action or substitution of the Altman & Miller Buckeye Co. was made until May, 1908, when an order of substitution was made without the consent of the defendants; that the Galveston Rope & Twine Company, a Texas corporation, had no interest in the judgment on which its suit was founded at the time of the commencement of the action, and forfeited its charter in 1896, and that the Galveston Rope Company has never been a party to the action. (Record, p. 36.)

On August 27, 1907, the four Missouri corporations, which had been doing business in Kansas without compliance with the law above quoted, filed their statement in writing declining to comply with the order of the court requiring them to present evidence of

compliance with the law. (Record, p. 44.) It was then shown to the court by appropriate proof that the Consolidated Steel & Wire Company went out of existence on November 23, 1899, by voluntarily surrendering its corporate franchise. (Record, p. 45.)

The court thereupon dismissed the cases as to all the corporations which were still going concerns, and ordered that the action be abated as to the Consolidated Steel & Wire Co., Altman, Miller & Co. and the Galveston Rope & Twine Co. No judgment or order whatever was entered against either the Altman & Miller Buckeye Co. or the Galveston Rope Co. Judgment for costs was entered against the Buck Stove & Range Co., Samuel Cupples Woodenware Co., St. Louis Refrigerator and Wooden Gutter Co. and St. Louis Glass & Queensware Co., but not against any of the other corporations.

The judgment and orders so made have been affirmed by the Supreme Court of Kansas and from its judgment seven corporations, among which are included Altman & Miller Buckeye Co. and Galveston Rope Co. which were not parties in the district court, are joined in a writ of error from this court to the Supreme Court of Kansas, while Altman, Miller & Co. and Galveston Rope & Twine Co. which were parties in the district court, do not appear as plaintiffs in error here.

The only assignments of error which suggest a federal question are the 10th, 15th, 16th, 17th, 18th, and 19th and these questions, though not clearly stated, seem to be that the Kansas statute above quoted is void as applied to this case under the Inter-state Commerce Clauses of the Constitution of the United States, and that the statute also impairs the obligations of contracts. (Record, pp. 2 and 3.)

And thereupon said defendants in error move the court to dismiss the writ of error herein upon the grounds and for the reasons following to-wit:

1. This court has no jurisdiction of the subject matter of said case or of any question presented by the record herein.

2. The Consolidated Steel & Wire Company does not exist, and therefore cannot join or be joined as a plaintiff in error, and cannot present a federal or any other kind of a question for the consideration of this Court.

3. The Altman & Miller Buckeye Company and the Galveston Rope Company, having never been parties to the judgment rendered by the district court of Saline county, cannot prosecute a writ of error to this Court to reverse that judgment, and the refusal of the district court to make them parties does not present any question under the constitution or laws of the

United States, or other basis for the jurisdiction of this court.

4. The dismissal of the actions of the four Missouri corporations for refusal to file their statements as required by the law of Kansas presents a question merely as to the exercise of a corporate power, *viz*, the power to maintain an action in a court of Kansas, and does not present any question as to the regulation of inter-state commerce or the obligation of contracts or other question which this Court has jurisdiction to determine.

5. The statute of Kansas does not in terms or in effect regulate or restrict, or attempt to regulate or restrict, inter-state commerce but does regulate the exercise of corporate powers by corporations, both domestic and foreign, and the decision of the Supreme Court of the state as to its construction and effect is final and conclusive on this Court.

6. The record does not present a question relating to the obligation of contracts, because no contractual relation existed between P. B. Maxson and the plaintiffs, who sought to take his property for the payment of the debt of another. The action was based on an alleged wrong, a fraud, and not on any allegation of contract.

7. Joint errors only are assigned in this Court by all the plaintiffs in error jointly, (Record, pp. 1, 2 and

3) while the orders and judgment of the District Court of Saline County, which were affirmed by the Supreme Court of Kansas, were several as to each of the plaintiffs in error, based on different states of fact, which related to and affected each plaintiff in error severally, and not any two or more of them jointly.

STEPHEN H. ALLEN,

ROBERT STONE,

Attorneys for defendants in error.

In addition to the grounds for dismissal set up in the foregoing motion, the defendants in error make the further objection to the jurisdiction of the Court that:

8. The order of dismissal of the action as to the four Missouri corporations, made by the District Court of Saline County, and which was affirmed by the Supreme Court of Kansas, is in substance a ruling on a plea in abatement, and is such a ruling as this Court is prohibited from reversing by Section 1011 of the Revised Statutes of the United States. The Code of Procedure of Kansas makes no mention of pleas in abatement by that name, but questions which may elsewhere be raised by plea in abatement may be raised in Kansas either by motion or answer. The ground on which the order of dismissal was made in this case

was brought to the attention of the Court in both ways, and the order complained of, and which the plaintiffs in error seek to have this Court reverse, is not a final judgment, but merely abates the action until the statute is complied with.

BRIEF AND ARGUMENT ON THE MOTION TO DISMISS.

I.

THERE ARE NO ASSIGNMENTS OF ERROR WHICH THE COURT CAN CONSIDER.

The nineteen assignments of error are all made jointly by all the plaintiffs in error. (Record, pp. 1, 2 and 3.) So far as the Consolidated Steel & Wire Company is concerned it can make no complaint and raise no question, federal or state, because it is dead. The only complaint anyone else can make for it is that it was denied relief because it was dead and because no relief could be given to so dead a corporation. Neither of the other plaintiffs in error has any interest in the question or right to vex this court with questions raised in its behalf.

As to the Galveston Rope Company and the Altman & Miller Buckeye Company, the only question that can be raised on the record is whether they are parties to

the record, and that question admits of but one answer. They are not parties. Neither of the other plaintiffs in error has any interest in this question or right to raise it, nor have these two corporations any common ground of complaint, for they were denied relief on entirely different grounds, applicable to each of them severally, and not in any particular to both of them jointly, nor involving any question of a Federal character.

As to the other plaintiffs in error, they cannot get into this Court yoked with a dead corporation and two outsiders, which were not parties to the case below, nor have they as between themselves any joint ground of complaint. Their business was several and the showing as to each was separate and distinct. Taking all these corporations together it is apparent that there is no common basis for the jurisdiction of this Court and no joint or common question for its consideration.

"A joint assignment of error which cannot be sustained as to all who join therein is bad as to all."

3 Cen. Digest, Sec. 2985, and authorities cited.

"An assignment of errors, like a pleading, must set forth errors which are available to all who join in it. If not good as to all it will not be good as to any. And a joint assignment not good as to all will be defective although it contains proper separate specifications of error."

2 Encyc. Pl. and Pr., 933, and cases cited in the notes.

"Upon a joint assignment of error one of several appellants or plaintiffs in error cannot avail himself of errors which are not common to all his co-appellants but which affect him alone. Nor can parties jointly assign error or take advantage of errors which affect them severally and not jointly. It is an elementary and well-settled rule that joint assignments of error must be good as to all who join therein, or they will not be available as to any of them. If the assignment of error is not good as to one, it will be overruled as to all. This doctrine has been applied in a host of decisions, and under widely-varying circumstances. Thus a joint assignment of error by several appellants presents no questions as to a ruling against one of the appellants only, and is ineffective for any purpose. Accordingly a joint assignment of error by several to the ruling of the court on the separate demurrer of one of them presents no question for the appellate court. A joint assignment of error based upon the action of the court in overruling a motion for a new trial cannot be considered on appeal, where the motion for a new trial appearing in the records was the sole and separate motion of one of the appellants. It has also been held that where parties join in a demurrer, which is overruled as not being good as to one, the other party, if the overruling is error as to him, can make it available only on a separate assignment of error. If appellants jointly assign as error the rulings on the separate demurrers of each, and separate motions for a new trial, such an assignment of error presents no question for the decision of the appellate court, nor is a defect of this character waived by a joinder in error. If a party for whom judgment was rendered and the other appellants jointly assign errors, the assignment will be bad and

the appeal will be dismissed. A joint assignment of errors by several defendants, that the complaint does not charge facts sufficient to constitue a cause of action, cannot be sustained unless the complaint is bad as to all."

2 Cyc. 1003, and authorities cited.

"As the verdicts and judgments were several the writ of error sued out by the defendants jointly was superfluous and may be dismissed without costs, and upon each of the writs of error sued out by the defendants severally the order will be judgment reversed."

Mutual Life Ins. Co. vs. Hillmon, 145 U. S. 285.

We respectfully submit that the assignments of error are insufficient to present any question for the consideration of this Court.

II.

THE ONLY DECISION OF THE SUPREME COURT OF KANSAS PRESENTED BY THE RECORD IS ITS RULING ON A PLEA IN ABATEMENT, WHICH THIS COURT IS DENIED THE POWER TO REVIEW OR REVERSE.

Section 1011 of the Revised Statutes of the United States provides:

"There shall be no reversal in the Supreme Court or in a circuit court upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact."

There was no decision on the merits of this case adverse to the plaintiffs in error. Their suit was abated and dismissed. It is not incumbent on this Court to inquire why. If the decision was merely on a plea in abatemnt the inquiry here is ended. The Kansas Code of Civil Procedure makes no mention of pleas in abatement by that name, but the questions which may be raised where such pleas are recognized are raised in Kansas either by motion or answer. The question of the right of the plaintiffs in error to maintain this action when they had not complied with the section of the statute above quoted was first raised by motion, (Record, p. 7) and afterward by answers. (Record, pp. 8 to 21.) The motion and answers amounted to and were in substance a plea in abatement of the action. They presented the single question of the plaintiffs right to further prosecute the action while they were in default of their statements. This point, and this point only, was determined against the plaintiffs in error. The merits of the case were not decided against them, nor were they concluded from afterward asserting their rights either in that or any other court. Pleas in abatement are thus defined in the Encyclopaedia of Pleading and Practice, Vol. 1. Page 1:

"Pleas in abatement are those which set up matter

tending to defeat or suspend the suit or proceeding in which they are interposed, but which do not debar the plaintiff from recommencing at some other time or in some other way."

It has been settled by the Supreme Court of Kansas that the only effect of noncompliance with the statute is to abate the action; that the plaintiff's cause of action is not taken away, but may be asserted in any other court having jurisdiction, or in the same court after compliance with the law.

"1. Contracts made with a foreign corporation before it has obtained permission under the provisions of chapter 10, Laws of 1898, and chapter 125, Laws of 1901 (Gen. Stat. 1901, § 1259, et. seq.), to do business in this state are not for that reason invalid or subject to cancellation at the suit of one of the contracting parties.

"2. The regulation of foreign corporations under the statutes referred to devolves upon the state, and a private individual is not allowed to interfere except in the single instance of a failure by the corporation to file its annual statement, *and then only to the extent of abating a suit against him until the required statement shall have been filed.*"

The State v. Book Co., 69 Kan. 1.

"The fact that the statute had not been complied with at the time of the execution of the contract does not make the contract void."

Hamilton v. Reeves & Co., 69 Kan. 844.

"The only part of the statute affecting the matter now to be determined is that already quoted in full, which merely provides that no foreign corporation do-

ing business in this state shall maintain an action in any of the courts of the state without furnishing certain information regarding its affairs. The restriction is laid, not upon the doing of business, but upon the use of the local courts. . . . Here the corporation is placed under a disability to sue upon any claim whatever so long as it fails to make the statements exacted of it. (*Swift & Co. v. Platte*, 68 Kan. 1.) Its contracts made during its non-compliance are not held void. *The courts do not take jurisdiction of its controversies and determine them against it because of its past attitude; they merely abate the inquiry until the required statements shall have been made.*"

Deere v. Wyland, 69 Kan. 260.

"The sole question presented in this case is whether the corporation, not having filed the statement and procured the certificate required by law before the commencement of the action, could comply with the law thereafter and maintain the action. The court below decided this question in the negative and dismissed the action. The judgment is reversed on the authority of *The State v. Book Co.*, 69 Kan. 1, *Deere v. Wyland*, 69 id. 255, and *Hamilton v. Reeves & Co.*, 69 Kan. 844."

Ryan Live-stock & F. Co. v. Kelly, 71 Kan. 874.

The construction given to the statute in the foregoing cases has been steadily adhered to and is the settled law of the state. On a former hearing of this case in the Supreme Court it was further held that before dismissing the case a reasonable time should be given the plaintiffs to comply with the statute, and it was said in the opinion:

"The Court should hear the evidence, and, if the facts alleged in the motion be sustained by the evidence,

tending to defeat or suspend the suit or proceeding in which they are interposed, but which do not debar the plaintiff from recommencing at some other time or in some other way."

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"1. Contracts made with a foreign corporation before it has obtained permission under the provisions of chapter 10, Laws of 1898, and chapter 125, Laws of 1901 (Gen. Stat. 1901, § 1259, et. seq.), to do business in this state are not for that reason invalid or subject to cancellation at the suit of one of the contracting parties.

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"The Court should hear the evidence, and, if the facts alleged in the motion be sustained by the evidence,

it should give them a reasonable time in which to comply with the statute. Upon their refusal to do so it should dismiss the suit."

Vickers v. Buck, 70 Kan. 584, 586.

Sec. 395 of the Code of Civil Procedure of Kansas (Ch. 95, Gen. Stat. of 1909) and which was not changed when the Code was revised, provides:

"Sec. 395. An action may be dismissed without prejudice to a future action: . . .

Fifth, by the court, for disobedience by the plaintiff of an order concerning the proceedings in the action."

On March 26, 1907, after the evidence had been submitted the court made its findings of fact and conclusions of law, among which were the following:

"That the plaintiff, The Buck Stove & Range Co., The Samuel Cupples Woodenware Co., The St. Louis Refrigerator & Wooden Gutter Co. and The St. Louis Glass and Queensware Co. have each of them ever since 1901, been doing business in the State of Kansas, within the meaning of Section 1 of Chapter 125 of the Session Laws of 1901, and that they have no right to maintain the action until they comply with the provisions of the laws of this state which prescribe the conditions upon which foreign corporations doing business in this state, may maintain actions in the courts of this state." (Record, 41.)

"8. That a reasonable time should be allowed the several foreign corporations who are plaintiffs in this suit and who have been doing business in this state, to comply with the laws of this state relating to foreign corporations doing business in this state, and an order should be made that in the event of their fail-

ure to comply with such laws within the time specified, that this action be dismissed so far as they are concerned."

. . . . . .

"And thereupon the Court granted the Buck Stove & Range Co., The Samuel Cupples Woodenware Co., The St. Louis Refrigerator & Wooden Gutter Co. and The St. Louis Glass & Queensware Co. until the 27th day of August, 1907, inclusive, to present evidence to this court that they have complied with the laws relating to foreign corporations doing business in the State of Kansas."

The proceedings and orders of the trial court in this regard were strictly in accordance with the directions of the Supreme Court of the state above quoted from 70 Kan. 584, 586. The plaintiff disobeyed the order and the court thereupon dismissed the action under Sec. 395 of the Code above quoted. This dismissal merely abated the suit without prejudice to another action.

"The rule is well settled and of long standing that a judgment or decree to be final, within the meaning of that term as used in the act of Congress giving this Court jurisdiction on appeals and writs of error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered."

Bostwick v. Brinkerhoff, 106 U. S. 3.
Grant v. Phoenix Ins. Co., 106 U. S. 429.
Benjamin v. Dubois, 118 U. S. 46.

An order dismissing a writ of error for failure to file a transcript in time is not a final judgment that may be reviewed by the Supreme Court. "The dismissal of the writ was a refusal to hear the cause."

Harrington v. Holler, 111 U. S. 796.

An order of a Circuit Court remanding a cause to the state court is not a final judgment and cannot be reviewed by writ of error.

Railroad Co. v. Wiswall, 90 U. S. 507.

"Code Civ. Proc. N. Y. § 1209 provides that a final judgment dismissing the complaint before or after trial does not prevent a new action for the same cause, unless it expressly declares or it appears by the judgment roll that it is rendered on the merits, held, that where a complaint in an action by plaintiff, a foreign corporation, in a state court of New York, was dismissed for failure of plaintiff to prove that it had received a certificate from the secretary of state authorizing it to do business in the state, such judgment was not on the merits, and was therefore no bar to a subsequent action by plaintiff in a federal court sitting in another state on the same cause of action."

Glencoe Granite Co. v. City Trust S. D. & S. Co., 55 C. C. A. 212.

The case last above cited was decided by the Circuit Court of Appeals of the 3rd Circuit and is exactly in line with the Kansas decisions as to the effect of a dismissal of this kind. No judgment has been entered in this case on the merits, and the ultimate rights of the

parties have not been determined. The findings of fact are favorable to the plaintiffs, and if a final judgment had been entered relief would probably have been given them. The court, however, required them to produce evidence of compliance with the state law before it would adjudicate their rights, and, on their refusal to furnish such proof dismissed the suit, without rendering any judgment on the merits or in any manner concluding the ultimate rights of the parties. Under the authorities above cited no final judgment has been entered from which a writ of error can be taken.

The Circuit Court of Appeals for the Eighth Circuit in the case of *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893, also held that the prohibition to sue in the courts of the state had no application to the federal courts sitting within the state. In the opinion in that case the court said:

> "The offence of a failure to comply with the corporation law of the state of Kansas was an offence against the state and not against the plaintiff in this suit. For that offence the state had ample remedy. It could prevent the maintenance of actions by this corporation in its courts." Id. 120 Fed. 898.

From the foregoing decisions it is clear that the statute as construed by the Supreme Court of Kansas, and also by the Circuit Court of Appeals, merely de-

feats the particular suit which is being prosecuted without compliance with it, and does not "debar the plaintiff from commencing at some other time or in some other way." The order of the court dismissing the action for failure to comply with the statute is therefore in substance and effect an order "ruling a plea in abatement" and not subject to review in this Court.

We do not apprehend that it will be contended that this was a plea to the jurisdiction of the court, for the jurisdiction of the trial court has been conceded at all times.

So far as we have been able to discover this Court has always recognized and enforced the limitation placed on its power by Sec. 1011 above quoted, no matter how important or meritorious the claim of error might appear. In *Robertson v. Coulter*, 16 Howard, this Court said in its opinion:

"The question raised by the plea in abatement in this case is one of considerable importance, and on which there is some conflict of opinion and decision, but the judgment of the court below on the plea is not subject to our revision on writ of error." (Quoting Sec. 1011 as above.)

In the case of *Stephens v. Monongahela Bank*, 111 U. S. 197, it was held that a plea of another action pending was a plea in abatement and could not be the subject of review in the Supreme Court.

The case of *International Textbook Co. v. Pigg*, 217 U. S. 91, in which the constitutionality of the statute under which this case was dismissed was considered, is not an authority on the point now under consideration, because it was not raised or discussed. There was no appearance in this Court by the defendant and no suggestion of a want of jurisdiction, and it is unnecessary now to inquire whether the record in that case presented the question we are now discussing, so that, if raised, it would have been available to the defendant.

Although the court in the order disposing of this case used different language with reference to some of the defendants from that applying to others, the utmost effect of the order as to any defendant is a dismissal of this suit without any determination of the merits of it, and without the interposition of any bar against the prosecution of another action on the same state of facts in any court of competent jurisdiction. The order reads:

"It is therefore considered, ordered and adjudged by the Court that these cases, *The Buck Stove & Range Co. et al. vs. C. C. Vickers et al., The Consolidated Steel & Wire Co. et al vs. C. C. Vickers et al.*, which have been heretofore consolidated for trial and judgment, be and the same are dismissed, because they and each of them refused to comply with the laws of Kansas relating to foreign corporations, to which order the

plaintiffs and each of them duly excepted, and that said action be abated as to the Consolidated Steel & Wire Co., the Altman Miller & Co. and The Galveston Rope & Twine Co." A judgment for the costs of the action against the four going concerns follows as a necessary incident to the dismissal of the suit. (Record, p. 46.)

The order contains no reference whatever to either the Altman & Miller Buckeye Co. or the Galveston Rope Co., which appear as plaintiffs in error in this Court.

The language used in the order with reference to the Consolidated Steel & Wire Co., the Altman & Miller Co. and the Galveston Rope & Twine Co. is that the action be abated, and the reason for the abatement was that these corporations had ceased to exist. Notwithstanding the differences in the language used the legal effect of the order is the same as to each and all the plaintiffs except that those still in existence are required to pay the costs.

We apprehend that it is not necessary to cite many authorities in support of the proposition that a judgment for the costs which had accrued in the fruitless action does not amount to a final judgment which will support the jurisdiction of this Court.

"Ordinarily a decree will not be reviewed by this Court on a question of costs merely in a suit in equity, although the court has entire control of the matter of

costs, as well as the merits, when it has possession of the cause on appeal from the final decree."

Trustees v. Greenough, 105 U. S. 527.

Bostwick v. Brinkerhoff, 106 U. S. 3.

"A judgment in a court of law or a decree in a court of equity for costs which does not dispose of the subject matter of the suit is manifestly only interlocutory."

13 Am. & Eng. Encyc. of Law, 34.

III.

NO FEDERAL QUESTION IS PRESENTED AS TO ANY PLAINTIFF IN ERROR.

No question as to the power of the legislature of Kansas to regulate, tax, restrict, or control inter-state commerce is presented by the record. The section of the statute above quoted imposes as a condition to the use of the courts of the state by corporations, whether domestic or foreign, that they shall file annual statements showing the condition of their affairs for the information of the public. In the passage of this statute the legislature had in view regulation of the exercise of corporate powers, not regulation of commerce, manufacturing, agriculture, or any other industry. For a corporation to sue or maintain a suit or recover a judgment is to exercise a corporate power. This power it can derive only from the state. One of

the powers acquired by every corporation by virtue of its charter is, "to sue or be sued", (1 Blackstone, 475), "to maintain and defend judicial proceedings," Gen. Stats. of Kansas, 1905, Ch. 23, Sec. 25. Clearly a domestic corporation acquires its power in Kansas to maintain and defend judicial proceedings from the legislature. It is immaterial what the business of the corporation may be. Suppose a Kansas corporation to be engaged solely in inter-state commerce, as the exportation of grain from Kansas to other states, can there be any doubt as to the power of the legislature of Kansas to prescribe the terms on which a domestic corporation of that kind shall exercise any corporate power, or on which it may be admitted to maintain suits in its courts? If the power of the state to prescribe the terms on which domestic corporations may exercise their powers within its territory is plenary, can foreign corporations demand protection from its courts while refusing to comply with the terms imposed alike on them and on domestic corporations? The law is well settled by a long line of decisions of this Court that the terms on which a foreign corporation may exercise corporate powers within any state may be fixed by such state in its discretion and without being subject to any supervision or control by federal authority. The statute under

consideration, as construed by the Supreme Court of the state, does not render contracts made by foreign corporations with citizens of the state void, where the corporation fails to comply with the law, nor does it absolutely deny a remedy in the courts of the state. It is held to be the duty of the court after proof of failure to comply with the law to still afford an opportunity to do so, and where the statemnts are filed out of time, or even where there is a *bona fide* effort to comply, the suit will not be dismissed. (See cases cited above, and *Jordan vs. Telegraph Co.*, 69 Kan. 140.) The facts on which the decision of the Supreme Court of Kansas was based are not open to question in this Court. Sec. 1011, Rev. Stat. above quoted.

"The decisions of state courts upon questions of fact are not reviewable by writ of error to those courts from the Supreme Court of the United States."

Chapman & Dewey Land Co. vs. Bigelow, 206 U. S. 41.

Thayer vs. Spratt, 189 U. S. 346.

Gleason vs. White, 109 U. S. 854.

Israel vs. Arthur, 152 U. S. 355.

Eau Claire Natl. Bank vs. Jackman, 204 U. S. 522.

Dower vs. Richards, 151 U. S. 658.

"The scope and meaning of a state statute, as determined by the highest court of the state, conclude the

federal Supreme Court in determining on writ of error to the state court whether or not such statute violates the federal constitution."

Smiley vs. Kansas, 196 U. S. 447.

National Cotton Oil Co. vs. Texas, 197 U. S. 115.

Tampa Waterworks Co. vs. Tampa, 199 U. S. 241.

"The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta vs. Earle*, 'It must dwell in the place of its creation and cannot migrate to another sovereignty.' The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other state, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interests. The whole matter rests in their discretion."

Paul vs. Virginia, 8 Wal. 168.

Ducat vs. Chicago, 10 Wal. 410.

Horn Silver Mining Co. vs. State of New York, 143 U. S. 305.

The question here presented is as to the right of a foreign corporation to prosecute an action for a tort in a court of the state of Kansas. That right has been denied, and the reason for its denial is that the plaintiffs have refused to comply with a police requirement now almost universally found in the legislation of the state. Interstate commerce is not primarily or secondarily affected by the decision under consideration. It is not affected at all, for the plaintiffs were not excluded from doing business in the state. They were not taxed for doing it, and the contracts made by them are not even made unlawful. They had their option to comply with the law within the time allowed them by the court and take their judgment, or to refuse to comply with it and go out of court. They chose the latter course and the court merely enforced the law of the state governing the conditions under which a foreign corporation may use its courts.

No question was raised either in the district court or the Supreme Court of Kansas under section 2 of Article IV of the Constitution of the United States, but if such a question had been raised it would have been of no avail to the plaintiffs in error for the law is well settled by the decisions of this Court that a corporation is not a citizen within the meaning of the

constitutional provision that, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Pembina Mining Co. vs. Pennsylvania, 125 U. S. 181.

Blake vs. McClung, 172 U. S. 239.

Whatever doubts may have been formerly entertained on the subject, it is now well settled law that the right of a foreign corporation to exercise its corporate powers within a state other than that of its creation depends solely upon the will of such other state.

Waters Pierce Oil Co. vs. Texas, 177 U. S. 28.

People vs. Roberts, 171 U. S. 658.

As this is the only question in fact presented by the record, we respectfully submit that it fails to present any question which this Court has jurisdiction to determine, and that the writ of error herein should therefore be dismissed.

Waters Pierce Oil Co. vs. Texas, 212 U. S. 112.

BRIEF AND ARGUMENT ON THE MERITS.

If the Court is of the opinion that the record presents a question which it has jurisdiction to hear and determine, that question must be:

Has the Legislature of Kansas power to exclude a foreign corporation from using its courts for the enforcement of claims which do not arise out of interstate commerce, or of any contract with or obligation to the United States, or act or duty under its authority?

The only defendant in these actions having property rights at stake is P. B. Maxson, whose land the plaintiffs seek to take and appropriate to the payment of the judgments they had obtained against C. C. Vickers. The interest of Vickers and wife is merely to defend themselves against a charge of fraud. (Petition, Rec., p. 5.) The claims against C. C. Vickers, on which these judgments were rendered, grew out of the dealings of the firm of W. L. Vickers & Co., at Wichita Falls, Texas. The members of this firm were W. L. Vickers and C. C. Vickers. It is not claimed that P. B. Maxson was a member of the firm, or in any manner obligated for the payment of its debts. C. C. Vickers, a farmer residing in Kansas, furnished all the capital and his nephew, W. L. Vickers, managed the business, none of which was transacted in the state of

Kansas. (Finding No. 8, Rec., p. 36.) The judgments, for the payment of which the plaintiffs sought to take Maxson's property, were all against C. C. Vickers alone. In this suit the state of Kansas enforced against the plaintiffs, all of which are foreign corporations, a provision of its statute, which in terms applies alike to all corporations, domestic and foreign, and requires them, as a condition precedent to the exercise of the corporate power of suing in a court of the state, to file a statement in the office of the Secretary of State giving certain information as to the affairs of the corporation. Has the State of Kansas in a case of this kind the power to make and enforce such a requirement? We presume that the power to enforce this requirement on a domestic corporation, engaged only in domestic business, will not be questioned here. Could the domestic corporation, brought into being by the state, by afterward engaging in interstate commerce render itself superior to its creator and successfully deny its authority? Manifestly not. How far then are the powers of foreign corporations, brought into existence by the laws of another state and engaged in interstate commerce, superior to those of domestic corporations similarly engaged? Before attempting to answer this question let us consider the general rule as to the corporate life, the vital essence

of a corporation outside of the sovereignty that created it.

"The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta vs. Earle*, 'It must dwell in the place of its creation and cannot migrate to another sovereignty.' The recognition of its existence even by other states and the enforcement of its contracts made therein, depend purely upon the comity of those states —a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

Paul vs. Virginia, 8 Wall. 168.

Ducat vs. Chicago, 10 Wall. 410.

Horn Silver Mining Co. vs. New York, 143 U. S.

Hooper vs. California, 155 U. S. 648.

The rule thus broadly laid down is subject to the limitation often declared by this Court that "a state cannot under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in in-

terstate commerce, or impose any burdens on such commerce within its limits." *Norfolk & Western Railroad vs. Pennsylvania*, 136 U. S. 114, 118.

In the cases of *Western Union Tel. Co. vs. Kansas*, 216 U. S. 1, and *Pullman Co. vs. Kansas*, 216 U. S. 56, this Court had under consideration the provisions of the statute which prescribe the terms on which a foreign corporation may be admitted to do business in Kansas, and require as a condition to such admission the payment of a specified per cent of its capital stock. The suits were brought by the state to exclude those corporations from the transaction of domestic business in the state, until they complied with the law and obtained from the state authority to exercise corporate functions in the transaction of such business. This Court held that the charter fee required was in substance and effect a tax on interstate commerce, that the business of these corporations in the transaction of interstate and domestic business was so closely interwoven that the denial of the right to carry on domestic business would be destructive of the interstate business, and that the state could not thus drive out corporations that had invested large sums in such business when no requirement of any such payment was made by the state. The questions before the Court in these cases were widely different from that pre-

sented in the case now before the Court, for here there is neither a question of taxation of acquired property rights, or of exclusion from the transaction of business. It is merely whether foreign corporations can use the courts of the state while refusing to comply with requirements imposed on all corporations alike, whether domestic or foreign.

We do not deny or attempt to evade the patent fact that the decisions in these cases break over the line of demarkation between the sovereign power of the state in all domestic matters and the exclusive power of Congress over interstate commerce, and deny the state sovereignty over domestic business that is bound up with interstate commerce. The question with which we are now concerned is where is the line drawn under the decisions in these cases? How much if anything is left of the old rule declared in *Bank of Augusta vs. Earle*, 13 Peters, 519? We think that this question is answered in the concurring opinion of Mr. Justice White in *Pullman Co. vs. Kansas*, 216 U. S. 65, 66:

"3. Subject to constitutional limitations, the states have the power to regulate the doing of local business within their borders. As a result of this power, and of the authority which government may exercise over corporations, the states have the right to control the coming within their borders of foreign corporations. In cases where this power is absolute the states

may affix to the privilege such conditions as are deemed proper, or, without giving a reason, may arbitrarily forbid such corporations from coming in. When, therefore, in a case where the absolute power to exclude obtains, a condition is affixed to the right of a corporation to come into a state and a foreign corporation avails of such right, it may not assail the constitutionality of the condition because by accepting the privilege it has voluntarily consented to be bound by the condition. In other words, in such case the absolute power of the state is the determining factor and the validity of the condition is immaterial." (Quoting from the opinion in *Horn Silver Mining Co. vs. New York*, 143 U. S. 305.)

"Having the absolute power of excluding the foreign corporation the state may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may deem expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital. No individual member of the corporation, or the corporation itself, can call in question the validity of any exaction which the state may require for the grant of its privileges. It does not lie in the foreign corporation to complain that it is subjected to the same law with the domestic corporation."

The question now under consideration is whether these plaintiffs are endowed with corporate life in Kansas, so that they may come into one of its courts and require of it the enforcement of a demand in spite of the will of its legislature and the decision of its courts. The case of *International Textbook Co. vs. Pigg*, 217 U. S. 91, holds § 1283, (Sec. 42, Ch. 23,

Gen. Stat. 1905, copied *supra*, pp. 3 to 5) unconstitutional as applied to a suit brought by a foreign corporation to enforce a contract made in carrying on interstate commerce. Its consideration by this Court presented one of those unfortunate situations, where a question of great public concern, *viz.*, the validity of an act of the legislature of a sovereign state, was submitted to the highest court in the land for final determination, with the special interest attacking the law represented by able counsel and no appearance for, or defence whatever of the rights of the state or its citizens. We shall not now attempt to present any argument which might then have been appropriate on behalf of the defendant, but shall content ourselves with pointing out the distinction between that case and this. The subject matter of that suit grew out of interstate commerce directly. A foreign corporation made a contract with a ciziten of Kansas to perform certain services and furnish certain goods for a specified compensation. The plaintiff performed its contract and the defendant refused to pay. This Court held that the statute imposed a burden on interstate commerce, and that the state could not deny the plaintiff the use of its courts for the enforcement of this contract. The case now before the court did not originate in interstate commerce. It is not claimed that

the defendant Maxson entered into any contract of interstate commerce, or into any contract whatever with the plaintiffs or either of them. As was said by the Supreme Court of Kansas in this case, 70 Kan. 585: "It must be borne in mind that this was not an action to enforce a contract, but a suit sounding in tort." The question here presented is, are these plaintiffs endowed in Kansas with the corporate power of maintaining this suit in a court of the state? One of the powers acquired by every corporation by virtue of its charter is "to sue and be sued" (1 Blackstone, 475); "To maintain and defend judicial proceedings." (General Statutes of Kansas, 1909, § 1722.) These plaintiffs came into court in this case and claimed the right to exercise this corporate power. Between the plaintiffs and the defendant Maxson, who is the only real party in interest, there is no question of interstate commerce. There have been no business dealings between them; no transactions of any kind, state or interstate. The plaintiffs come into a court of Kansas and ask it to appropriate Maxson's property to the payment of Vickers' debt. The Court asks who and what are you? By what authority do you assume to exercise corporate powers in this sovereignty? The plaintiffs answer, we are foreign corporations engaged in interstate commerce. The Court replies, this con-

fers on you no corporate power, no legal existence here. You cannot create yourself by entering into any particular business. The power to sue in this court is a corporate power. Every citizen of the United States has the right to sue in a court of this state, but you are not a citizen of this or any other state. You are nothing but what the law makes you, mere legal entities, existing only where the law gives you life and with only such powers as the law gives you. The laws of other states have no binding force here. Neither Missouri, Illinois, Ohio or Texas can give you any corporate life in Kansas or any power to sue in its courts. The state of Kansas has never conferred on these plaintiffs or any of them any artificial entity, any corporate power, or any right to appear in its courts. The Consolidated Steel and Wire Co., though out of existence by its own voluntary act, has just as much corporate life in Kansas as either of the other plaintiffs, except where the state voluntarily recognizes their existence. The power of a state to confer or withhold corporate powers is an absolute power. So far as we know it has never been claimed that any set of men can under any circumstances compel a state or its officers to grant a corporate charter to them for any purpose. Such grants depend solely on the will of the state. This being so, it is wholly immaterial what

reason is advanced for granting or withholding corporate powers, for it may be done with or without reason. Nor is the power of the state to deny the exercise of a single corporate power, except on the terms imposed by the legislature, diminished or taken away by its voluntary recognition of the existence of foreign corporations for all other purposes. Clearly a state has a right to its own public policy. Clearly it may impose on foreign corporations the same restrictions it imposes on domestic ones. Otherwise the will of the legislature of Missouri is superior in Kansas to that of the legislature of Kansas.

"The state of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or marine business. She has the power, if she allows such companies to enter her confines, to determine the conditions on which the entry shall be made. And as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting who is in her jurisdiction with any foreign company which had not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory

of the state which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

Hooper vs. California, 155 U. S. 648.

"This is an action upon a written contract alleging a breach and claiming damages. It was brought in the United States Circuit Court for the Eastern District of Wisconsin by an Illinois corporation against a Wisconsin corporation. On June 25, 1898, the date when the contract was made, a law had been enacted in Wisconsin, to go into operation later, on September 1, 1898, requiring corporations incorporated elsewhere to file a copy of their charter with the secretary of state, and to pay a small fee as a condition of doing business there. (Wis. Stat. 1898, Secs. 1770b-1978.) This it was admitted that the plaintiff had not done, and the defendant set up that the contract was a contract to do business in Wisconsin after the statute took effect, and that the defendant was justified by the statute in declining to go on. The judge sustained this defence and the plaintiff excepted, contending that the statute did not and could not, constitutionally affect its rights under the contract in question.

"A prohibition of the doing of business after a statute goes into effect is not retroactive in regard to that business, even though the business be done in pursuance of an earlier contract. . . . The prohibition in this case is not absolute, but is only conditional on the failure to deposit a copy of the plaintiff's charter and to pay a small fee. It is merely incident to a regulation which, but for the contract, unquestionably would be proper, and which is familiar in the laws of the state. It can be avoided by compliance with the regulations. We are not prepared to say that the regula-

tion would be unreasonable or invalid as to such a contract as this, even if enacted after the contract was made. But we rest our decision on the narrower ground of the foregoing consideration taken in connection with what we are about to say. . . .

"In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn and distinctions of degree must be made."

Diamond Glue Co. vs. United States Glue Co., 187 U. S. 611.

In determining whether the statute under consideration was passed for the purpose of regulating interstate commerce or not we must consider its general purpose and application. It merely requires all corporations to furnish certain information. What valid objection can be urged against even the policy of the law, and what doubt can there be of the power of the legislature to make the requirements? Is it logical to say that, because some corporation may engage in interstate commerce, the law must allow it to come into the state for all purposes, freed from all the reasonable regulations and requirements that are imposed on domestic corporations? But the statute under consideration has no special reference to commerce, much less

to interstate commerce. It applies to all corporations, whatever the nature of their business, manufacturing, mining, agricultural or anything else, except banking, insurance and railroad corporations, which are under the special supervision of separate departments of the state government and required to make more full and detailed statements of their affairs than other business corporations. Can it be that this Court holds the requirement of such statements, even of corporations engaged in interstate commerce, unreasonably and unconstitutionally burdensome? Wherein does this statute differ in principle from that of Wisconsin considered in the case above cited? This statute was not passed to regulate commerce, but to make certain information as to the affairs of corporations available to the citizens. The penalty imposed for failure to furnish that information is a temporary suspension of the right to exercise, not all, but one corporate function, that of suing in a court of the state, during the period of delinquency. The act deals exclusively with the exercise of corporate powers, a subject over which the power of the legislature is absolute.

Osborne vs. Florida, 164 U. S. 650.
Pullman Co. vs. Adams, 189 U. S. 420.
Allen vs. Pullman Palace Car Co., 191 U. S. 171.
Waters Pierce Oil Co. vs. Texas, 177 U. S. 28.
People vs. Roberts, 171 U. S. 658.

In the case of *Security Mutual Life Ins. Co. v. Prewitt* this Court held that a statute of Kentucky, providing for the revocation of the authority of an insurance company to do business in the state by the Commissioner of Insurance if it should remove a suit brought against it into a federal court or should sue a citizen of the state in a federal court, was valid, notwithstanding the well established rule that the insurance company had a perfect right to remove causes into or bring suits in the federal courts, which right the state could not take away. The reason for revoking the authority was held to be an unconstitutional one, but, as the state had the power to exclude the insurance company from the exercise of corporate power in the state without assigning any reason, the fact that it assigned a bad one did not diminish its power to exclude.

"As a state has power to refuse permission to a foreign insurance company to do business at all within its confines, and as it has power to withdraw that permission when once given, without stating any reason for its action, the fact that it may give what some may think a poor reason or none for a valid act is immaterial."

Security Mutual Life Ins. Co. vs. Prewitt, 202 U. S. 246, 257.

In the case just cited the power of the state to revoke all authority to do business in the state for a

clearly unconstitutional reason was upheld by this Court. In the case now before the court the exercise of one corporate power only is suspended until the law is complied with. All corporations, domestic as well as foreign, are subject to the same disability under the same circumstances. The requirement of the law for which the exclusion is made is not unreasonable or unusual in the legislation of the states and but for the decision in the case of *International Textbook vs. Pigg, supra*, could hardly be said to be clearly invalid or unconstitutional, (19 Cyc. 1298). The ground for exclusion from exercising the power to sue in a state court is failure to file the required statement while doing business in the state. It is admitted by the plaintiffs that they failed to file the statements and were doing business in the state within the meaning of the statute. If they had denied it the denial would not avail them here, for the finding of the state court on the question of fact is conclusive.

Doyle vs. Richards, 151 U. S. 658.

Israel vs. Arthur, 152 U. S. 355.

Gleason vs. White, 109 U. S. 854.

Thayer vs. Spratt, 189 U. S. 346.

Eau Claire Natl. Bk. vs. Jackman, 204 U. S. 522.

Chapman & Dewey Land Co. vs. Bigelow, 206 U. S. 41.

The language of the law and the decision of the courts of Kansas exclude them and abate their suit. For this Court to hold the statute void does not reach the point now to be decided, for a valid grant of power to sue in a court of Kansas must be found before the order of dismissal can be reversed. The plaintiffs must point out a grant of a corporate power from some governmental agency having legislative authority in Kansas. No mere acts of the plaintiffs themselves can give them such power. The statutes of Kansas deny them the power and the Supreme Court of the state has decided that they do not have it. If the laws of Kansas have not conferred the right on them what laws have? They claim no grant of corporate powers from the government of the United States. The cases all hold that no other state can confer on them a corporate power to be exercised in Kansas, except in carrying on interstate commerce or discharging some governmental function or performing some duty for the United States. The claim then must be that by engaging in interstate commerce they confer on themselves corporate powers to be exercised in all matters whether of interstate commerce or local business. The cases relied on by plaintiffs in error are either criminal prosecutions for failure to pay a license tax, suits to oust a corporation from doing business or cases

directly involving interstate commerce. This case is in another class, and does not directly involve any tax or fee, or any contract or transaction of interstate commerce. It is merely a claim of foreign corporations of the right to require a court of Kansas, maintained at the expense of the people of the state, to appropriate the lands of Maxson to pay their judgments against Vickers.

We respectfully submit that the record in this case presents no question which this Court has jurisdiction to determine, but, if the Court be of the opinion that it has jurisdiction of the merits of the case, we further submit that the decision of the Supreme Court of Kansas is right and should be affirmed.

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of corporations of other States to do business in Kansas, are stated in the opinion.

Mr. Seneca N. Taylor and *Mr. Malcolm B. Nicholson*, with whom *Mr. William J. Pirtle* was on the brief, for plaintiffs in error:

There is no misjoinder of plaintiffs in error. *Kansas City* v. *King*, 65 Kansas, 65.

Plaintiffs in error having been engaged exclusively in interstate commerce, the application of the corporation laws of Kansas to them is repugnant to the interstate commerce clause of the Constitution of the United States, and such application cannot lawfully be made. *Cooper Mfg. Co.* v. *Ferguson and Harrison*, 113 U. S. 727.

Plaintiffs in error were entitled to bring and maintain these suits in the courts of the State of Kansas upon the same terms and upon the same footing as an individual citizen of the States of their creation, and of which these corporations were citizens, under § 2, Art. IV of the Constitution of the United States. 133 U. S. 107.

The manner of these people in dealing with the citizens of Kansas is interstate commerce. *Stockard* v. *Morgan*, 185 U. S. 27; *Brown* v. *Maryland*, 12 Wheat. 419; *Welton* v. *Missouri*, 91 U. S. 275; *Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489; 1 I. C. C. Rep. 45.

State statutes requiring foreign corporations to comply with certain conditions before doing business in the State have frequently been held inapplicable to a foreign corporation whose only business in the State is selling through traveling agents and delivering goods manufactured outside of the State, since any other construction of the statute would render it void as an interference with interstate commerce. *Havens & G. Co.* v. *Diamond*, 93 Ill. App. 557; *Coit & Co.* v. *Sutton*, 102 Michigan, 324; 25 L. R. A. 819; 4 I. C. C. Rep. 768; *Toledo Com. Co.* v. *Glen Mfg. Co.*, 55 Oh. St. 217; *Mearshon* v. *Pottsville*

Lumber Co., 187 Pac. Rep. 12; *Bateman* v. *Western Star Mill Co.*, 1 Tex. Civ. App. 90; 4 I. C. C. Rep. 260; 20 S. W. Rep. 931; *Davis & R. Bldg. & Mfg. Co.* v. *Dix*, 64 Fed. Rep. 406; *Woessner* v. *Cottam & Co.*, 19 Tex. Civ. App. 611; also *City of Ft. Scott* v. *Pelton*, 39 Kansas, 764; and see *New Orleans Gas Light Co.* v. *Louisiana Light & H. P. & Mfg. Co.*, 115 U. S. 650.

Plaintiffs in error had a vested right to maintain and prosecute the suits to judgment.

The judgments upon which these suits were founded were obtained in November, 1895, and these suits were commenced June 13, 1896. Chapter 10 of the laws passed by the special session, 1898, became effective on January 11, 1899, two years and six months after these suits were commenced.

Before the passage of that law the courts of the State were open to all corporations alike, foreign and domestic, and no restrictions of any kind placed upon foreign corporations to come into the courts of the State of Kansas and seek their remedy against any of its citizens.

It is not within the power of the legislature to deprive these plaintiffs of the remedy by casting a pecuniary burden upon them.

Plaintiffs in error, having commenced the suits long prior to the enactment of the law in question, had a vested right to maintain such suits and prosecute them to judgment, and were protected in such right by § 10, Art. I, of the Constitution of the United States, prohibiting the States from passing any law impairing the obligation of contracts. This court has repeatedly decided that the remedy is a part of the contract, and any legislative act that deprives a party of a remedy is repugnant to the provisions of said § 10. *Osborn* v. *Nicholson*, 13 Wall. 654; *Fitzgerald* v. *Weidenbeck*, 76 Fed. Rep. 695; *Martindale* v. *Moore*, 3 Blackf. (Ind.) 275; *Root* v. *Sweeney*, 12 S. Dak. 43; *S. C.*, 80 N. W. Rep. 149; also see *Elston* v.

Piggott, 94 Indiana, 14; *Maguiar* v. *Henry*, 84 Kentucky, 1; 7 Ky. L. Rep. 695; 4 Am. St. Rep. 182; and *Yeatman* v. *Day*, 79 Kentucky, 186; 8 Cyc. 932; *Williams* v. *Bruffy*, 96 U. S. 176; *Westerly Waterworks* v. *Westerly*, 75 Fed. Rep. 181.

In this respect corporations are no different from individuals. *Norfolk & Western R. R. Co.* v. *Pennsylvania*, 136 U. S. 114; *Missouri Railway Co.* v. *Patrick*, 127 U. S. 205; *Santa Clara County* v. *Pennsylvania*, 125 U. S. 181.

The Kansas courts construed the law in this case as retrospective, which is contrary to all rules of construction in respect to laws not specifically stating that they are retrospective. *Auffm'ordt* v. *Rasin*, 102 U. S. 623; *Gunn* v. *Barry*, 15 Wall. 624; *Bartruff* v. *Remey*, 15 Iowa, 257.

Mr. Stephen H. Allen, with whom *Mr. Robert Stone* was on the brief, for defendants in error:

There are no assignments of error which the court can consider.

The only decision of the Supreme Court of Kansas presented by the record is its ruling on a plea in abatement, which this court is denied the power to review or reverse. Section 1011, Rev. Stat., U. S.

There was no decision on the merits of this case adverse to the plaintiffs in error. Their suit was abated and dismissed. 1 Enc. of Pl. & Pr. 1.

Plaintiff's cause of action is not taken away, but may be asserted in any other court having jurisdiction, or in the same court after compliance with the law. *State* v. *Book Co.*, 69 Kansas, 1; *Hamilton* v. *Reeves & Co.*, 69 Kansas, 844; *Ryan Live-Stock & F. Co.* v. *Kelly*, 71 Kansas, 874.

The construction given to the statute in the foregoing cases has been steadily adhered to and is the settled law of the State. *Vickers* v. *Buck*, 70 Kansas, 584, 586; § 395, Code of Civ. Pro. of Kansas, Ch. 95, Gen. Stat. of 1909.

A judgment or decree to be final, within the meaning of that term as used in the act of Congress giving this court jurisdiction on appeals and writs of error, must terminate the litigation between the parties on the merits. *Bostwick* v. *Brinkerhoff*, 106 U. S. 3; *Grant* v. *Phœnix Ins. Co.*, 106 U. S. 429; *Benjamin* v. *Dubois*, 118 U. S. 46; *Harrington* v. *Holler*, 111 U. S. 796; *Railroad Co.* v. *Wiswall*, 23 Wall. 507; *Glencoe Granite Co.* v. *City Trust, S. D. & S. Co.*, 55 C. C. A. 212.

The prohibition to sue in the courts of the State has no application to the Federal courts sitting within the State. *Blodgett* v. *Lanyon Zinc Co.*, 120 Fed. Rep. 893.

This court has always recognized and enforced the limitation placed on its power by § 1011, no matter how important or meritorious the claim of error might appear. *Robertson* v. *Coulter*, 16 How. 106; *Stephens* v. *Monongahela Bank*, 111 U. S. 197. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, in which the constitutionality of the statute under which this case was dismissed was considered, is not an authority on the point now under consideration, because it was not raised or discussed.

A judgment for the costs which had accrued in the fruitless action does not amount to a final judgment which will support the jurisdiction of this court. *Trustees* v. *Greenough*, 105 U. S. 527; *Bostwick* v. *Brinkerhoff*, 106 U. S. 3; 13 Am. & Eng. Ency. of Law, 34.

No Federal question is presented as to any plaintiff in error.

The terms on which a foreign corporation may exercise corporate powers within any State may be fixed by such State in its discretion and without being subject to any supervision or control by Federal authority. The statute under consideration, as construed by the Supreme Court of the State, does not render contracts made by foreign corporations with citizens of the State void, where the corporation fails to comply with the law, nor does it ab-

solutely deny a remedy in the courts of the State. *Jordan* v. *Telegraph Co.*, 69 Kansas, 140. The facts in which the decision of the Supreme Court of Kansas was based are not open to question in this court. *Chapman & Dewey Land Co.* v. *Bigelow*, 206 U. S. 41; *Thayer* v. *Spratt*, 189 U. S. 346; *Gleason* v. *White*, 160 U. S. 854; *Israel* v. *Arthur*, 152 U. S. 355; *Eau Claire Natl. Bank* v. *Jackman*, 204 U. S. 522; *Dower* v. *Richards*, 151 U. S. 658.

The scope and meaning of a state statute, as determined by the highest court of the State, conclude this court in determining on writ of error to the state court whether or not such statute violates the Federal Constitution. *Smiley* v. *Kansas*, 196 U. S. 447; *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *Tampa Waterworks Co.* v. *Tampa*, 199 U. S. 241; *Paul* v. *Virginia*, 8 Wall. 168; *Ducat* v. *Chicago*, 10 Wall. 410; *Horn Silver Mining Co.* v. *State of New York*, 143 U. S. 305.

The question here presented is as to the right of a foreign corporation to prosecute an action for a tort in a court of the State of Kansas. That right has been denied, and the reason for its denial is that the plaintiffs have refused to comply with a police requirement now almost universally found in the legislation of the States. Interstate commerce is not primarily or secondarily affected by the decision under consideration.

A corporation is not a citizen within the meaning of the privilege and immunity provision. *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S. 181; *Blake* v. *McClung*, 172 U. S. 239.

The right of a foreign corporation to exercise its corporate powers within a State other than that of its creation depends solely upon the will of such other State. *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *Same* v. *Texas*, 212 U. S. 112. *People* v. *Roberts*, 171 U. S. 658.

As to the merits, the legislature of Kansas has power to exclude a foreign corporation from using its courts for the

enforcement of claims which do not arise out of interstate commerce, or of any contract with or obligation to the United States, or act or duty under its authority. *Paul* v. *Virginia*, 8 Wall. 168; *Ducat* v. *Chicago*, 10 Wall. 410; *Horn Silver Mining Co.* v. *New York*, 143 U. S. 305; *Hooper* v. *California*, 155 U. S. 648; *Norfolk & Western Railroad* v. *Pennsylvania*, 136 U. S. 114, 118.

Western Union Tel. Co. v. *Kansas*, 216 U. S. 1, and *Pullman Co.* v. *Kansas*, 216 U. S. 56, involved questions widely different from that presented in the case now before the court, for here there is neither a question of taxation of acquired property rights, or of exclusion from the transaction of business.

The statute has no special reference to commerce, much less to interstate commerce. It was not passed to regulate commerce, but to make certain information as to the affairs of corporations available to the citizens. The penalty imposed for failure to furnish that information is a temporary suspension of the right to exercise, not all, but one corporate function, that of suing in a court of the State, during the period of delinquency. The act deals exclusively with the exercise of corporate powers, a subject over which the power of the legislature is absolute. *Osborne* v. *Florida*, 164 U. S. 650; *Pullman Co.* v. *Adams*, 189 U. S. 420; *Allen* v. *Pullman Palace Car Co.*, 191 U. S. 171; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *People* v. *Roberts*, 171 U. S. 658; *Security Mutual Life Ins. Co.* v. *Prewitt*, 202 U. S. 246, 257.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

By suits begun in the District Court of Morris County, Kansas, and consolidated for purposes of trial and judgment, seven judgment creditors of one Vickers sought to set aside, as fraudulent, a conveyance by him and to

subject the land included therein to the satisfaction of their several judgments. The plaintiffs were corporations organized under the laws of States other than Kansas, and four of them were doing a purely interstate business in that State, but without complying with its laws presently to be mentioned. The defendants set up this non-compliance by an answer in the nature of a plea in abatement, and the court sustained the plea and dismissed the suits as to the four plaintiffs. As to the other three plaintiffs, relief was denied for other reasons, which need not be stated. The judgment was affirmed by the Supreme Court of the State, against the contention that the laws of Kansas under which the plea in abatement was sustained are violative of the commerce clause of the Constitution of the United States, 80 Kansas, 29, and then the case was brought here.

Some minor questions of appellate practice were urged upon our attention, but their statement and consideration have become unnecessary through the concession of counsel for plaintiffs in error, made during the oral argument and acted upon at the time, that the writ of error might be dismissed as to the Aultman and Miller Buckeye Co., the Consolidated Steel and Wire Co., and the Galveston Rope Co. Therefore, attention need be given only to the ruling upon the plea in abatement.

Our power to review this ruling is challenged, because of the statutory provision that there shall be no reversal in this court upon a writ of error "for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court." Rev. Stat., § 1011. This provision has been part of the judiciary acts from the beginning, and often has been applied upon writs of error to the circuit and district courts, but never to a case coming here from a state court. *Piquignot* v. *Pennsylvania Railroad Co.*, 16 How. 104, and *Stephens* v. *Monongahela Bank*, 111 U. S. 197, illustrate its application in cases brought here from

circuit courts, and *International Textbook Co.* v. *Pigg*, 217 U. S. 91, and *International Textbook Co.* v. *Lynch*, 218 U. S. 664, are cases in which it was not applied upon writs of error to state courts. This difference in the treatment of the two classes of cases has not been inadvertent but deliberate, and the reason for it is at once apparent when § 22 of the original Judiciary Act, 1 Stat. 84, c. 20, is examined. The provision originated in that section and was there associated with other provisions which unmistakably show that it was intended to embrace only writs of error to the circuit and district courts. At the time of the revision in 1873, § 22 was divided into several shorter sections and included in the revision according to an arrangement, adopted for purposes of convenience only, whereby the several parts of the original section became more or less separated; but that, in the absence of some substantial change in phraseology, did not work any change in their purpose or meaning. Rev. Stat., § 5600; *Hyde* v. *United States*, 225 U. S. 347, 361; *McDonald* v. *Hovey*, 110 U. S. 619. This is a writ of error to a state court, and so our power to review the ruling upon the plea in abatement is not affected by § 1011.

The statute of Kansas under which the plea was sustained is embodied in the General Statutes of 1905, and provides, in §§ 1332–1336, that to entitle a corporation organized under the laws of another State to do business in Kansas it must (*a*) make application to, and obtain the permission of, the Charter Board of the State, (*b*) accompany its application with a fee of $25.00, (*c*) file with the Secretary of State its irrevocable consent that process against it may be served upon that officer, (*d*) be organized for a purpose for which a domestic corporation may be organized, (*e*) pay to the State Treasurer, for the benefit of the permanent school fund, a specified per cent. of its authorized capital, and (*f*) file with the Secretary of State a certified copy of its charter. And by § 1358 the

BUCK STOVE AND RANGE CO. *v.* VICKERS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 10. Argued December 19, 1911.—Decided December 2, 1912.

Rev. Stat., § 1011, providing that there shall be no reversal in this court upon a writ of error for error in ruling on any plea of abatement other than one to the jurisdiction of the court, does not apply to writs of error to state courts but only to lower Federal courts.

The subdivision and rearrangement of § 22 of the Judiciary Act of 1789 in the Revised Statutes of 1873 did not work any change in the purpose and meaning of the original act.

The statute of Kansas of 1905, requiring certain classes of foreign corporations to file statements is an invalid restriction and burden and unconstitutional as to foreign corporations engaged in interstate commerce, under the commerce clause of the Federal Constitution. *International Textbook Company* v. *Pigg*, 217 U. S. 91.

80 Kansas, 29, reversed.

THE facts, which involve the application of § 1011, Rev. Stat., to writs of error to state courts and also the constitutionality of a statute of Kansas affecting the right

statute provides that each corporation for profit, doing business in the State, except banking, insurance and railroad corporations, shall annually prepare and deliver to the Secretary of State a complete and detailed statement, exhibiting: "1st. The authorized capital stock. 2nd. The paid-up capital stock. 3rd. The par value and the market value per share of said stock. 4th. A complete and detailed statement of the assets and liabilities of the corporation. 5th. A full and complete list of the stockholders, with the postoffice address of each, and the number of shares held and paid for by each. 6th. The names and postoffice addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held." This section further provides that a failure to file such statement by any corporation doing business in the State and not organized under its laws shall work a forfeiture of the right or authority to do business in the State, and that "No action shall be maintained or recovery had in any of the courts of this State by any corporation doing business in this State without first obtaining the certificate of the Secretary of State that statements provided for in this section have been properly made."

The four corporations against which the plea was sustained were corporations for profit organized under the laws of States other than Kansas, were not banking, insurance or railroad corporations, were doing business in Kansas—a purely interstate business—and had not complied with the statute just described. There can be no doubt, therefore, that if the statute, especially § 1358, is valid as against such corporations, the plea was rightly sustained; otherwise, it should have been overruled. So, the question for decision is, whether, consistently with the commerce clause of the Constitution of the United States, a State may thus restrict and burden the right to do interstate business within its limits. This precise

question was presented to this court and decided in the negative in the case of *International Textbook Co.* v. *Pigg*, 217 U. S. 91, a case in which the Supreme Court of Kansas had applied the provisions of § 1358 (§ 1283, Gen. Stat. 1901) to a corporation of another State doing an interstate business in Kansas. And the decision of this court in that case was shortly thereafter followed in the similar case of *International Textbook Co.* v. *Lynch*, 218 U. S. 664, brought here on error to the Supreme Court of Vermont. It is due to the Supreme Court of Kansas to observe that this court's decision in the *Pigg Case* had not been made when that court's decision in the present case was given; but in saying this we would not be understood as implying that this court announced any new doctrine in the *Pigg Case*, for it but reiterated and applied principles which were already well recognized, as was shown in the earlier cases of *Paul* v. *Virginia*, 8 Wall. 168, 182; *Cooper Mfg. Co.* v. *Ferguson*, 113 U. S. 727, 734, and *Crutcher* v. *Kentucky*, 141 U. S. 47, 56.

As accurately reflecting what was held in the *Pigg Case*, we excerpt the following from the opinion of the court, delivered by Mr. Justice Harlan (pp. 109, 112):

"'To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.'

* * * * * * * *

"How far a corporation of one State is entitled to claim in another State, where it is doing business, equality of treatment with individual citizens in respect of the right

to sue and defend in the courts is a question which the exigencies of this case do not require to be definitely decided. It is sufficient to say that the requirement of the Statement mentioned in § 1283 [§ 1358, Gen. Stat. 1905] of the statute imposes a direct burden on the plaintiff's right to engage in interstate business, and, therefore, is in violation of its constitutional rights. It is the established doctrine of this court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business. But such a burden is imposed when the corporation of another State, lawfully engaged in interstate commerce, is required, as a condition of its right to prosecute its business in Kansas, to make and file a Statement setting forth certain facts which the State, confessedly, could not control by legislation. It results that the provision as to the Statement mentioned in § 1283 [§ 1358, Gen. Stat. 1905] must fall before the Constitution of the United States, and with it—according to the established rules of statutory construction—must fall that part of *the same section* which provides that the obtaining of the certificate of the Secretary of State that such Statement has been properly made shall be a condition precedent to the right of the plaintiff to maintain an action in the courts of Kansas."

Following the decision in that case, we hold that the statute upon which the plea in abatement was rested is unconstitutional and void, and that the plea should not have been sustained but overruled.

The judgment is reversed as to the remaining plaintiffs in error, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE PITNEY did not hear the argument or participate in the decision of this case.